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No. \_\_\_\_

Supreme Court, U.S.

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ALEXANDER L STEVAS

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

—  
HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner*,

v.

ELIZABETH HALL, *et al.*,  
*Respondents*.

—  
**PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF TEXAS**

—  
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**Questions Presented**

1. Whether a Texas Court constitutionally may assert *in personam* jurisdiction over a nonresident Colombian corporation where the plaintiffs' wrongful death actions arose out of a helicopter accident in Peru and where the Colombian corporation's sole contacts with Texas involved equipment purchases from a third party Texas corporation and a single contract discussion with decedents' employer in Texas and where plaintiffs' causes of action did not arise out of these contacts.
2. Whether the due process and equal protection clauses of the Fourteenth Amendment are violated by the exercise of *in personam* jurisdiction over a nonresident

alien corporation under circumstances in which a nonresident United States corporation could not constitutionally be subjected to jurisdiction.<sup>1</sup>

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<sup>1</sup> The following persons and entities were parties before the Texas Supreme Court: Elizabeth Hall, individually and as next friend of Delbert Hall, a minor; Susan Carol Porton; Harve Porton and Verda Ola Porton, individually and as next friends of Jeffery Taylor Porton, a minor; Naomi Lewallen, individually and as next friend of Ginger Lewallen, a minor; Gary Lewallen; Louise C. Moore (appellants); and Helicopteros Nacionales de Colombia, S.A. (appellee).

Helicopteros Nacionales de Colombia, S.A. (hereinafter Helicol), is a Colombian Corporation. Aerovias Nacionales de Colombia (known as Avianca) owns approximately 94 percent of Helicol's capital stock. The remainder of its stock is held by Aerovias Corporacion de Viajes and four South American individuals.

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL PROVISION INVOLVED .....	2
STATEMENT OF THE CASE .....	2
REASONS FOR GRANTING WRIT .....	6
I. THE DECISION OF THE TEXAS SUPREME COURT CONFLICTS WITH THE DECISION OF THE COURT IN <i>PERKINS v. BENGUET CONSOLIDATED MINING CO.</i> , 342 U.S. 437 (1952), AND IS CONTRARY TO THE PRINCIPLES OF <i>IN PERSONAM</i> JURISDICTION OVER NONRESIDENT CORPORATE DEFENDANTS LAID DOWN BY THE COURT IN <i>INTERNATIONAL SHOE CO. v. WASHINGTON</i> , 326 U.S. 310 (1945), AND <i>WORLD-WIDE VOLKSWAGEN CORP. v. WOODSON</i> , 444 U.S. 286 (1980) .....	7
II. THE HOLDING OF THE TEXAS SUPREME COURT THAT AN ALIEN NONRESIDENT CORPORATION WAS SUBJECT TO THE <i>IN PERSONAM</i> JURISDICTION OF A STATE COURT BECAUSE OF ITS PURCHASE OF AMERICAN PRODUCTS IN THE FORUM STATE IS CONTRARY TO THE DECISION OF THE COURT IN <i>ROSENBERG BROTHERS &amp; CO. v. CURTIS BROWN CO.</i> , 260 U.S. 516 (1923), AND PRESENTS AN IMPORTANT QUESTION HAVING WIDE-RANGING IMPLICATIONS FOR UNITED STATES TRADE RELATIONS .....	14
III. THE DECISION OF THE TEXAS SUPREME COURT CONFLICTS WITH DECISIONS OF THE HIGHEST COURTS OF SEVERAL STATES AND DEMONSTRATES THE NEED FOR FURTHER CLARIFICATION OF FEDERAL DUE PROCESS AS IT RELATES TO <i>IN PERSONAM</i> JURISDICTION OVER NONRESIDENT CORPORATIONS .....	15

**Table of Contents Continued**

	Page
IV. THE PRINCIPLE THAT AN ALIEN NONRESIDENT CORPORATION IS NOT ENTITLED TO THE SAME RIGHTS OF FEDERAL DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS ARE UNITED STATES CORPORATIONS ON THE QUESTION OF AMENABILITY TO SUIT IN STATE AND FEDERAL COURTS PRESENTS AN IMPORTANT CONSTITUTIONAL QUESTION WHICH SHOULD BE RESOLVED BY THE COURT IN THE INTEREST OF THE FOREIGN COMMERCE OF THE UNITED STATES .....	18
CONCLUSION .....	20

## TABLE OF AUTHORITIES

CASES:	Page
<i>Baxter v. Mouzavires</i> , 434 A.2d 988 (D.C. 1981), cert. denied, 455 U.S. 1006 (1982) .....	17
<i>Chelsea House Publishers v. Nicholstone Book Bindery, Inc.</i> , 621 S.W.2d 560 (Tenn. 1981), cert. denied, 455 U.S. 994 (1982) .....	17
<i>Conn v. Whitmore</i> , 9 Utah 2d 250, 342 P.2d 871 (1959) .....	16
<i>Hutchinson v. Chase &amp; Gilbert, Inc.</i> , 45 F.2d 139 (2d Cir. 1930) .....	14
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) .....	7, 8, 12, 13
<i>Kulko v. Superior Court</i> , 436 U.S. 84 (1978) .....	7, 11, 13
<i>Lakeside Bridge &amp; Steel Co. v. Mountain State Construction Co.</i> , 597 F.2d 596 (7th Cir. 1979), cert. denied, 445 U.S. 907 (1980) .....	17
<i>Marshall Egg Transport Co. v. Bender Goodman Co.</i> , 275 Minn. 534, 148 N.W. 2d 161 (1967) .....	16
<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437 (1952) .....	7, 9, 10, 12, 13
<i>Plyler v. Doe</i> , 102 S. Ct. 2382 (1982) .....	19
<i>Ratliff v. Cooper Laboratories, Inc.</i> , 444 F.2d 745 (4th Cir.), cert. denied, 404 U.S. 948 (1971) .....	10
<i>Rosenberg Brothers &amp; Co. v. Curtis Brown Co.</i> , 260 U.S. 516 (1923) .....	14, 15
<i>Seymour v. Parke, Davis &amp; Co.</i> , 423 F.2d 584 (1st Cir. 1970) .....	10
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977) .....	8
<i>U-Anchor Advertising, Inc. v. Burt</i> , 553 S.W. 2d 760 (Tex. 1977) .....	6
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	7, 11, 12, 13
CONSTITUTIONAL PROVISION AND STATUTES:	
U.S. Const. amend. XIV, § 1 .....	2
28 U.S.C. § 1257(3) (1982) .....	2
Tex. Rev. Stat. Ann. art. 2031b (1982) .....	5

**Table of Authorities Continued**

	<b>Page</b>
<b>RULES:</b>	
Sup. Ct. R. 17.1(b), (c) .....	13, 45
<b>OTHER AUTHORITIES:</b>	
Restatement (Second) of Conflict of Laws § 47 (1971) .	9

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**Opinions Below**

The final opinion of the Supreme Court of Texas appears in the appendix to this petition with the concurring opinion of Justices Campbell and McGee and the dissenting opinion of Justice Pope in which Chief Justice Greenhill and Justice Barron joined. (App. pp. 1a-14a, 32a-45a). Also appearing in the appendix are the initial opinion of the Supreme Court of Texas which was withdrawn on respondents' motion for reconsideration (App. pp. 46a-57a), the opinion of the Court of Civil Appeals of the State of Texas (App. pp. 63a-71a), and the directive of the trial court, the District Court of Harris County, Texas, for an order denying petitioner's motion to dismiss on grounds of lack of *in personam* jurisdiction. (App. pp. 72a-73a).

The final opinion of the Supreme Court of Texas is reported at 638 S.W.2d 870 (Tex. 1982). The opinion of

the Court of Civil Appeals is reported at 616 S.W.2d 247 (Tex. Ct. Civ. App. 1981).

#### **Jurisdiction**

On October 6, 1982, the Supreme Court of Texas denied petitioner's motion for reconsideration of its July 21, 1982 judgment. (App. pp. 74a-75a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3) (1982).

#### **Constitutional Provision Involved**

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### **Statement of the Case**

On January 26, 1976, a helicopter owned by Helicopteros Nacionales de Colombia, S.A., (hereinafter Helicol), crashed in Peru, killing respondents' decedents, employees of Williams-Sedco-Horn, a joint venture headquartered in Oklahoma. Respondents' decedents were United States citizens domiciled in states other than Texas, hired by Williams-Sedco-Horn to provide services in Peru in furtherance of the joint venture's contract with Petro Peru, the Peruvian state-owned oil company, to construct a pipeline from the jungles of Peru to the Pacific Ocean.

For purposes of its work on the Peruvian pipeline, Williams-Sedco-Horn formed a consortium under Peruvian law operating under the name "Consorcio". Consorcio designated Lima, Peru, as its legal residence, as Peruvian law forbade construction of the pipeline by a non-Peruvian company.

Helicol, a Colombian corporation having its principal place of business in Bogota, Colombia, is in the business of providing helicopter transportation in South America to oil and construction companies. Helicol was initially contacted in South America by a member of Consorcio, Williams International Sundamerica, Ltd., (hereinafter Williams), a construction company headquartered in Oklahoma, with which Helicol had previously done business in South America. Helicol was asked to send an officer to Tulsa, Oklahoma, to discuss a potential contract for the performance of services in Peru. After the commencement of a meeting in Tulsa, Helicol's officer was requested to fly to Houston, Texas, on Williams' corporate aircraft to meet with the other members of Consorcio. Some preliminary contractual discussions occurred at the Houston meeting. Thereafter, a contract was signed in Peru on November 11, 1974, by Helicol's Peruvian lawyer and by a Peruvian resident representing Consorcio.

Prior to its execution, the contract had been approved by the Peruvian Air Force, as required by Peruvian law. It was written in Spanish on official government stationery and provided that the residence of all parties to the contract would be Lima, Peru, and further provided that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts. It also provided that Consorcio would make payments to Helicol's account with the Bank of America in New York City.

The following significant facts are a part of the record in the courts below:

1. Helicol has never performed any of its business or helicopter operations in Texas;
2. Helicol has never solicited any business in Texas;
3. Helicol has never sold any products that reached Texas;
4. Helicol has never been authorized to do business in Texas and has never had an agent for the service of process in Texas;
5. Helicol has never recruited employees in Texas;
6. Helicol has never owned real or personal property in Texas and has never had any records or offices in Texas or representatives based in Texas;
7. The contract between Helicol and Consorcio was executed in Peru to be performed in Peru;
8. Payment for helicopter services in Peru rendered to Consorcio was made to Helicol, pursuant to the contract terms, by deposit of funds in a New York bank specified by Helicol;
9. The only business transactions ever entered into in Texas by Helicol were the purchase of several Bell Helicopters and associated equipment which included transitional training on the operational characteristics and maintenance requirements of the purchased equipment;
10. The tort causes of action sued upon arose out of a helicopter accident in Peru;
11. Neither respondents nor respondents' decedents were or are residents or citizens of Texas.

Respondents filed four wrongful death actions in the District Court of Harris County, Texas, claiming that

negligence on the part of Helicol proximately caused the helicopter accident in Peru on January 26, 1976 in which respondents' decedents were killed.

Helicol filed special appearances and moved to dismiss respondents' actions for lack of *in personam* jurisdiction. After an evidentiary hearing, Helicol's motions were denied (App. pp. 72a-73a), respondents' actions were consolidated for trial and judgment subsequently was entered against Helicol on a jury verdict in favor of respondents.

On January 22, 1981, the Court of Civil Appeals reversed the judgment of the trial court and held that the trial court lacked *in personam* jurisdiction over Helicol. (App. pp. 63a-71a)

On February 24, 1982, the Texas Supreme Court affirmed the decision of the Court of Civil Appeals. The respondents thereafter moved for reconsideration of the decision. The Supreme Court of Texas, on July 21, 1982 reversed itself, withdrew its earlier opinion and filed a second opinion reversing the judgment of the Court of Civil Appeals and affirming the decision of the trial court. Justice Campbell filed a concurring opinion in which Justice McGee joined. Justice Pope filed a dissenting opinion in which Chief Justice Greenhill and Justice Barrow joined. Helicol then moved for reconsideration which the Supreme Court of Texas denied on October 6, 1982, with three justices dissenting. (App. pp. 74a-75a).

The Supreme Court of Texas, in reaching its decision that personal jurisdiction could properly be exercised over Helicol by the Texas trial court, determined that the Texas long-arm statute, Tex. Rev. Civ. Stat. Ann. art. 2031b (1982) (App. pp. 76a-78a), permitted Texas courts to exercise jurisdiction to the fullest extent permitted by

the Constitution, citing *U-Anchor Advertising, Inc. v. Burt*, 553 S.W. 760 (Tex. 1977). This determination was rejected by the dissenting justices, who stated: "Article 2031b requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction." (emphasis in original) (App. p. 33a).

The Texas Supreme Court went on to hold that "Helicol's numerous and substantial contacts do constitute 'doing business' in this State and the trial court's actions do not offend due process." (App. p. 7a).

In his concurring opinion (App. p. 10a), Justice Campbell stated that federal due process in respect to *in personam* jurisdiction may be applied differently where the defendant is an alien resident of a foreign country rather than a United States citizen. (App. p. 10a). *See also* note 6 *infra* at p. 18. This rationale was refuted in Helicol's motion for reargument and rejected by three of the justices of the Texas Supreme Court. (App. pp. 44a-45a).

#### **Reasons For Granting Writ**

The Supreme Court of Texas incorrectly held that Helicol, an alien nonresident corporation, was doing business in Texas because Helicol made equipment purchases in Texas and had a single contract discussion in Texas and, therefore, was subject to the jurisdiction of the Texas courts on a cause of action unrelated to its contacts with Texas.

THE DECISION OF THE TEXAS SUPREME COURT  
CONFLICTS WITH THE DECISION OF THE COURT IN  
*PERKINS v. BENGUET CONSOLIDATED MINING CO.*, 342  
U.S. 437 (1952), AND IS CONTRARY TO THE PRINCIPLES  
OF *IN PERSONAM* JURISDICTION OVER NONRESIDENT  
CORPORATE DEFENDANTS LAID DOWN BY THE COURT  
IN *INTERNATIONAL SHOE CO. v. WASHINGTON*, 326 U.S.  
310 (1945), AND *WORLD-WIDE VOLKSWAGEN CORP. v.  
WOODSON*, 444 U.S. 286 (1980)

The issue in this case is the quality and nature of a nonresident corporation's activities in a state which, as a matter of federal due process, will permit that state to entertain a cause of action against that nonresident corporation, where the cause of action did not arise from the corporation's activities in the state.

In reaching its decision, the Texas Supreme Court violated the teachings of the Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). The decision of the Texas Supreme Court was an unconstitutional exercise of *in personam* jurisdiction over Helicol which this Court should reverse and set aside as was done in *Kulko v. Superior Court*, 436 U.S. 84 (1978) and *World-Wide Volkswagen Corp. v. Woodson*, *supra*.

In *International Shoe Co. v. Washington*, 326 U.S 310 (1945), the Court recognized that different due process considerations are involved where the defendant's activities in the state are so substantial and continuous as to constitute residency in the state and, on the other hand, where the nonresident defendant's contacts with the

state, although incidental, transitory and infrequent, gave rise to the cause of action.<sup>2</sup>

*International Shoe* teaches that while a small number of contacts between the defendant and the forum state might be a sufficient basis for the exercise of personal jurisdiction over a defendant with respect to a cause of action arising out of a defendant's activities in the forum state, a qualitatively different relationship is required where the cause of action is unrelated to the contacts of the defendant with the forum state.

[I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there [citations omitted]. . . . To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

326 U.S. at 317.

The Texas Supreme Court could not and did not hold that the cause of action arose from Helicol's contacts with Texas. Rather, it held that Helicol's contacts with the state were sufficient to permit Texas to exercise *in personam* jurisdiction over Helicol even though the cause of action did not arise from such activities in the state.

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<sup>2</sup> The Court in *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977), reiterated that a relationship between the forum and the cause of action is required for the assertion of jurisdiction over a nonresident defendant, stating that "the relationship among the defendant, the forum and the litigation [is] . . . the central concern of the inquiry into personal jurisdiction."

The issue in this case is the same issue that was before the Court in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). As the Court stated the issue in *Perkins*:

It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio (emphasis in original).

342 U.S. at 447.

In vacating the decision of the Supreme Court of Ohio which held that Ohio courts could not exercise *in personam* jurisdiction over a Phillipine defendant on a cause of action arising outside Ohio, the Court, in *Perkins*, emphasized that the defendant had moved its operations to Ohio during World War II and that the president of the company operated from Ohio, carrying on a "continuous and systematic" supervision of the company. Thus the Court concluded that because of the defendant's substantial and continuous activities in Ohio, "it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding." 342 U.S. at 448.

The due process standard the Court established in *Perkins* is that with respect to a foreign based cause of action, the nonresident corporation's activities must at least be "continuous" and "substantial." 342 U.S. at 445-447. *See Restatement (Second) of Conflict of Laws* § 47 (1971).

The activities or contacts of Helicol in Texas were neither continuous nor substantial.

The Texas court, after reciting Helicol's "contacts" with Texas, held that "these contacts constitute sufficient minimum contacts to find Helicol amenable to the jurisdiction of the Texas courts." (App. p. 3a).

The minimum contacts standard the Texas Supreme Court applied with respect to a cause of action which did not arise from Helicol's contacts with the state was contrary to the Court's decision in *Perkins*, as Justice Pope of the Texas Supreme Court pointed out in his dissenting opinion. (App. pp. 43a-44a).<sup>3</sup>

The Supreme Court of Texas in concluding that Helicol was "doing business" in Texas and that Texas courts could exercise *in personam* jurisdiction over Helicol without violating due process relied upon the following:

- (a) Purchases by Helicol of helicopters from a Texas company, Bell Helicopter Company, and certain transition training given to Helicol employees incident to its equipment purchases;
- (b) A single business meeting between a representative of Helicol and Williams-Sedco-Horn in Houston, Texas, for the purpose of discussing a potential contract with Consorcio; and
- (c) The payment of funds to Helicol by drafts drawn on a Texas bank.

The items listed in the opinion of the Supreme Court of Texas (App. p. 3a) can be reduced to the contacts listed above.

As discussed in Point II, *infra*, purchases in the forum state as distinct from sales in the forum state do not

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<sup>3</sup> The decision of the Texas Supreme Court also conflicts with decisions in the United States Courts of Appeals for the First and Fourth Circuits. *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745 (4th Cir.), *cert. denied*, 404 U.S. 948 (1971); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584 (1st Cir. 1970).

constitute doing business in the forum. Similarly, one discussion of a potential contract by an officer of Helicol in Texas cannot provide a basis for a finding that Helicol was "doing business" within the state. One contact cannot constitute either substantial or continuous activity. Helicol did not even solicit this business within the State of Texas. It was contacted in South America by a member of Consorcio. Its services were solicited.<sup>4</sup>

The Texas Supreme Court also relied upon Helicol's receipt of contractual payments drawn on a Texas bank as a basis for the exercise of *in personam* jurisdiction. Drafts forwarded by Consorcio from Texas to Helicol's bank in New York for deposit do not constitute payments made in Texas. For its part, Helicol had no bank account or representative for receipt of payments within Texas. Furthermore, the election by Consorcio to draw upon a Texas bank for the purpose of making payments in New York was its own. The unilateral act of a third party or the other party to the action cannot provide the basis of personal jurisdiction over a nonresident. *See, e.g., Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978).

In sum, Helicol's "contacts" with the State of Texas as described by the Supreme Court of Texas do not constitute "substantial" and "continuous" activity. *Perkins*

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<sup>4</sup> Helicol's officer testified at the evidentiary hearing held on the question of personal jurisdiction that he had no intention of traveling to Texas when he left South America, that he planned to travel only to Oklahoma pursuant to the request of a member of Consorcio with whom Helicol had previously dealt, that once it was deemed necessary by the Oklahoma member of Consorcio to travel to Texas, a corporate aircraft was made available for that purpose, that his wife remained in Tulsa while he was flown to Houston and that he returned to Oklahoma immediately after the Houston meeting.

v. Benguet Consolidated Mining Co., 342 U.S. at 446, 447.

Where, as here, respondents' cause of action did not arise from Helicol's contacts with Texas, *Perkins* and *International Shoe* mandate that there must be substantial business activity by a nonresident defendant to satisfy federal due process requirements.

The Texas court ignored the *Perkins* and *International Shoe* standards and its decision is in direct conflict with those decisions.

*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), is the most recent statement of the Court on the due process requirements governing the amenability of a nonresident defendant to suit in a distant forum. In that case, the cause of action arose from an automobile accident in Oklahoma and the Court held that, notwithstanding the accident in the forum state, minimum contacts must also exist between the defendant and the forum state. 444 U.S. at 292. The Court held that there were no such contacts between the forum and the defendant and that the due process clause does not contemplate *in personam* jurisdiction where the corporate defendant had "no contacts, ties or relations" with the forum. *Id.* at 294 (citing *International Shoe*, 326 U.S. at 319).

The dissenting Justices in *World-Wide Volkswagen* were of the view that the Oklahoma court constitutionally could exercise *in personam* jurisdiction because of the interest of the forum in adjudicating the action which arose in the forum state. The dissenting Justices agreed that minimum contacts must exist among the parties, the contested transaction and the forum state. 444 U.S. at 310-311 (Mr. Justice Brennan, dissenting), 313 (Mr. Justice Marshall, dissenting), 318 (Mr. Justice Blackmun, dissenting).

*World-Wide Volkswagen* was a minimum contacts case dealing with a forum-based cause of action. The Supreme Court of Texas misread *World-Wide Volkswagen* by applying the minimum contacts principles announced in that case to a case where the cause of action is foreign-based and where, according to *International Shoe* and *Perkins*, substantial business activity on the part of the nonresident corporate defendant constitutionally is required.

The constitutional principle underlying the Court's statement in *Kulko v. Superior Court*, 436 U.S. 84 (1978) (a custody case involving a natural person as defendant) is equally applicable to the present case involving an alien corporate defendant.

To hold such temporary visits [defendant's visit to California in 1959 on a three day military stopover on his way to Korea and a four hour stopover in 1960 on his return from Korean service] to a State a basis for the assertion of *in personam* jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment.

436 U.S. at 93.

The assertion of *in personam* jurisdiction over Helicol by Texas courts on the basis of the incidental and infrequent contacts described above with respect to a cause of action unrelated to Texas was an unconstitutional exercise of *in personam* jurisdiction over Helicol in violation of federal due process and contrary to the decisions of the Court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); Sup. Ct. R. 17.1(c).

## II

THE HOLDING OF THE TEXAS SUPREME COURT THAT  
AN ALIEN NONRESIDENT CORPORATION WAS SUBJECT  
TO THE *IN PERSONAM* JURISDICTION OF A STATE  
COURT BECAUSE OF ITS PURCHASE OF AMERICAN  
PRODUCTS IN THE FORUM STATE IS CONTRARY TO  
THE DECISION OF THE COURT IN *ROSENBERG*  
*BROTHERS & CO. v. CURTIS BROWN CO.*, 260 U.S. 516  
(1923), AND PRESENTS AN IMPORTANT QUESTION  
HAVING WIDE-RANGING IMPLICATIONS FOR UNITED  
STATES TRADE RELATIONS

In concluding that Helicol was doing business within the State of Texas, the Supreme Court of Texas relied heavily upon Helicol's purchase of equipment from Bell Helicopter Co., a Texas manufacturer. (App. p. 3a) This Court expressly has held that purchases by a nonresident corporation within the forum state are insufficient to constitute "doing business" for purposes of assessing the corporation's amenability to personal jurisdiction.

In *Rosenberg Brothers & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), appellant sought a reversal of the lower court's holding that purchases within the forum state did not constitute "presence" for purposes of asserting jurisdiction over a nonresident defendant. In affirming the lower court's decision, the Court stated:

[Appellee's] only connection with [the forum] appears to have been the purchase there from time to time of a large part of the merchandise to be sold at its store [in another state] . . . The only business alleged to have been transacted [in the forum] . . . related to such purchases of goods by officers of a foreign corporation. Visits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the State.

260 U.S. at 518. See also *Hutchinson v. Chase & Gilbert, Inc.*, 45 F.2d 139 (2d Cir. 1930) (L. Hand, J.).

The decision of the Texas Supreme Court conflicts with the holding of this Court in *Rosenberg*.

In addition, as *in personam* jurisdiction was asserted over an alien corporation because of its purchase of American products, the decision of the Texas Supreme Court presents serious problems for nonresident alien purchasers.

Prospective foreign purchasers of American products may be deterred from buying them if, in so doing, they may be forced to defend lawsuits in the United States arising from foreign disputes unrelated to the purchases.

As the holding of the Texas Supreme Court is not only inconsistent with *Rosenberg Brothers & Co., v. Curtis Brown Co.*, but also imposes an unnecessary obstacle to United States trade relations, the Court should grant this petition for a writ of certiorari to address the question whether purchases from a forum vendor by a nonresident purchaser constitute a sufficient basis for the assertion of *in personam* jurisdiction over the nonresident purchaser with respect to a foreign cause of action which does not arise from such purchases. Sup. Ct. R. 17.1(b), (c).

### III

#### THE DECISION OF THE TEXAS SUPREME COURT CONFLICTS WITH DECISIONS OF THE HIGHEST COURTS OF SEVERAL STATES AND DEMONSTRATES THE NEED FOR FURTHER CLARIFICATION OF FEDERAL DUE PROCESS AS IT RELATES TO *IN PERSONAM* JURISDICTION OF NONRESIDENT CORPORATIONS

The Texas Supreme Court relies heavily, if not entirely, upon purchases made by Helicol in Texas as a basis for finding that Helicol had numerous and substantial business contacts in Texas. This ruling is in conflict with

*Marshall Egg Transport Co. v. Bender Goodman Co.*, 275 Minn. 534, 148 N.W. 2d 161 (1967), and *Conn v. Whitmore*, 9 Utah 2d 250, 342 P.2d 871 (1959).

In *Marshall Egg*, the Supreme Court of Minnesota held that a series of purchases of eggs in the forum state was insufficient to support the assertion of *in personam* jurisdiction over the out-of-state purchaser. The court stated:

Plaintiff asserts, however, that because it had had a series of similar transactions with defendant the latter should be considered subject to the jurisdiction of the Minnesota court. The trial court disagreed with this reasoning and took the position that the question involved herein should not depend on the quantity of transactions but rather on the nature of the transaction giving rise to this controversy. We again agree with the trial court that, under the circumstances here, where a single transaction would lack the degree of participation necessary to require defendant's submission to the jurisdiction of this state, such a deficiency could not be cured merely by repeated similar transactions.

275 Minn. at 538, 148 N.W.2d at 164.

In *Conn*, the Supreme Court of Utah, in refusing to give full faith and credit to an Illinois judgment, held that where a contract for the purchase of horses was entered into in Utah, but with inspection and delivery occurring in Illinois, such did not amount to the transaction of any business within the forum state (Illinois). Thus, according to the Utah court, sufficient minimum contacts did not exist so as to constitutionally allow the forum state (Illinois) to assert jurisdiction over the purchaser.

The *Conn* court stated: "[T]he correspondence through the mails between the parties plus the incidental activi-

ties of having an agent inspect the horses and taking delivery in Illinois did not amount to the 'transaction of any business' within the state of Illinois." 9 Utah 2d at 255, 342 P.2d at 875.

The existence of conflicting state court decisions on the issue of *in personam* jurisdiction over nonresident corporations was noted by Mr. Justice White in his dissent from the denial of a writ of certiorari in *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*, 597 F.2d 596 (7th Cir. 1979, *cert. denied*, 445 U.S. 907 (1980). Mr. Justice White stated:

The question of personal jurisdiction over a nonresident corporate defendant based on contractual dealings with a resident plaintiff has deeply divided federal and state courts [citations omitted]. . . . The question at issue is one of considerable importance to contractual dealings with purchasers and sellers located in different states. The disarray among federal and state courts noted above may well have a disruptive effect on commercial relations in which certainty of result is a prime objective.<sup>5</sup>

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<sup>5</sup> In two subsequent denials of petitions for writs of certiorari, Mr. Justice White and Mr. Justice Powell filed similar dissenting opinions on denials of petitions for writs of certiorari. *Chelsea House Publishers v. Nicholstone Book Bindery, Inc.*, 621 S.W.2d 560 (Tenn. 1981), *cert. denied*, 455 U.S. 994 (1982); *Baxter v. Mouzavires*, 434 A.2d 988 (D.C. 1981), *cert. denied*, 455 U.S. 1006 (1982).

## IV

**THE PRINCIPLE THAT AN ALIEN NONRESIDENT CORPORATION IS NOT ENTITLED TO THE SAME RIGHTS OF FEDERAL DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS ARE UNITED STATES CORPORATIONS ON THE QUESTION OF AMENABILITY TO SUIT IN STATE AND FEDERAL COURTS PRESENTS AN IMPORTANT CONSTITUTIONAL QUESTION WHICH SHOULD BE RESOLVED BY THE COURT IN THE INTEREST OF THE FOREIGN COMMERCE OF THE UNITED STATES**

Although it is difficult to be certain of the complete rationale of the Texas Supreme Court, the justices who filed a concurring opinion indicated that the application of "due process," with respect to *in personam* jurisdiction, is different where the lawsuit is brought by a United States citizen against an alien defendant, rather than against another United States citizen.<sup>6</sup> (App. p. 10a).

As the dissenting justices noted:

A separate concurring opinion filed on rehearing contends that the "long arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due

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<sup>6</sup> The concurring justices in their opinion dated July 21, 1982 had stated that because the jurisdictional issue is between countries, namely citizens of the United States and a resident of Colombia, "our 'due process' application must be broader in scope." (App. p. 10a) On September 17, 1982, after Helicol's motion for rehearing was filed raising the above issue, the Clerk of the Texas Supreme Court advised West Publishing Company by letter that the language: "Therefore, our 'due process' application must be broader in scope" was removed from the opinion and the following language was substituted: "Therefore, 'due process' in this case must be universal in its application." (See App. p. 10a)

process than United States citizens [citations omitted], it is nevertheless inconsistent with the way due process has been applied in previous cases. (App. p. 44a).

The issue in this case is whether the alien status of the defendant is a factor which may be considered by a court in determining the scope of due process, and, if so, whether an alien nonresident corporation enjoys less due process than a United States corporation and may constitutionally be required to defend legal actions in state courts from which United States corporations would be immune.

The due process clause of the United States Constitution refers to "persons," without distinction as to their citizenship. Additionally the equal protection clause forbids a state to deny to any person within its jurisdiction the equal protection of the laws.

The Texas Supreme Court appears to have decided that due process requirements are lessened in the case of an alien corporation. Even if this were a permissible construction of the due process clause, it would be impermissible under the equal protection clause.

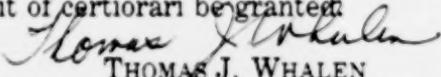
The equal protection clause applies to Helicol's rights since, for the purpose of determining the question of *in personam* jurisdiction, Helicol had submitted to the jurisdiction of the Texas courts for the resolution of that question. *Cf. Plyler v. Doe*, 102 S.Ct. 2382 (1982).

To the extent that the decision of the Supreme Court of Texas was based upon a lesser standard of due process because Helicol was an alien nonresident corporation, the decision should be reversed and the principle reestablished that alien corporations are entitled to be judged by the same due process standards as United States corporations.

Any dilution of the mandate of the Fourteenth Amendment concerning equal protection of the laws as it relates to alien corporations should be examined by the Court before further confusion ensues. Such dilution will have a negative effect upon alien nonresidents who conduct any type of business transactions with United States citizens.

#### CONCLUSION

For the reasons set forth above, petitioner urges that this petition for a writ of certiorari be granted.



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Dated: January 4, 1983

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### CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this fourth day of January, 1983, served three copies of the foregoing petition for a writ of certiorari to the Supreme Court of Texas upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

George Pletcher, Esq.  
Helm, Pletcher & Hogan  
2800 Two Houston Center  
Houston, Texas 77002

/s/

Thomas J. Whalen

Thomas J. Whalen, Esq.

## INDEX TO APPENDIX

	Page
Opinion of Supreme Court of Texas on Respondents' Mo- tion For Rehearing dated July 21, 1982 .....	1a
Concurring Opinion dated July 21, 1982 .....	8a
Withdrawn Dissenting Opinion dated July 21, 1982 ..	15a
Dissenting Opinion dated October 6, 1982 .....	32a
Withdrawn Opinion of the Supreme Court of Texas dated February 24, 1982 .....	46a
Dissenting Opinion dated February 24, 1982 .....	58a
Opinion of the Court of Civil Appeals of Texas, Houston (1st Dist.), dated January 22, 1981 .....	63a
Letter from Judge Wyatt Heard of the District Court Overruling the Special Appearance of Helicol dated March 28, 1978 .....	72a
Order of October 6, 1982, Overruling Petitioner's Motion for Rehearing before the Supreme Court of the State of Texas .....	74a
Tex. Rev. Civ. Stat. Ann. art. 2031b. ....	76a

IN THE SUPREME COURT OF TEXAS

\_\_\_\_\_  
No. C-243  
\_\_\_\_\_  
\_\_\_\_\_

ELIZABETH HALL, et al.,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

(“HELICOL”),

*Respondent.*

\_\_\_\_\_  
FROM HARRIS COUNTY FIRST DISTRICT

\_\_\_\_\_  
ON MOTION FOR REHEARING

*Our opinion of February 24, 1982, is withdrawn and this opinion is substituted therefor.*

Elizabeth Hall and the other plaintiffs in the trial court (Hall) are the survivors of four citizens of the United States killed in a helicopter crash in Peru while working in that country constructing a pipeline. Hall sued Helicol, the owner and operator of the helicopter which crashed, in Harris County, Texas, in four separate causes of action. Helicol entered a special appearance in each of the actions, to contest the jurisdiction of the Texas court pursuant to Rule 120a, TEX. R. CIV. P., all of which were overruled by the respective trial courts. The four actions were consolidated for trial resulting in a judgment for Hall. The court of civil appeals reversed the judgment of the trial court and ordered the case dismissed for lack of jurisdiction. 616 S.W.2d 247. We reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

The only issue before us is whether under the facts of this cause of action, was Helicol amenable to jurisdiction in Texas. Therefore, this Court must decide whether the trial court's exercise of jurisdiction over Helicol was consistent with the requirements of due process of law under the Constitution of the United States.

In 1974, Petro Peru, the Peruvian state owned oil company, made a contract with Williams-Sedco-Horn,<sup>1</sup> (referred to as Consorcio in their contract), a joint venture based in Houston, Texas, to construct a pipeline from the interior of Peru to the Pacific Ocean. The defendant, Helicol, was brought into the project by Williams-Sedco-Horn to provide necessary transportation of workers and supplies, by helicopter, to regions where there were no roads. Helicol was originally contacted by a Williams executive who had contracted with Helicol in the past. In response to that contact, the general manager of Helicol flew to Oklahoma, and then proceeded to Houston, Texas to negotiate with the three members of the joint venture. After reaching agreement on all terms of the contract in Houston, those terms were related to Helicol's office in Peru. The contract in its final form was approved by the Peruvian Air Force as required by Peruvian law, typed in Spanish and executed by representatives of all parties in Peru. Helicol did not maintain an office in Texas, had no designated agent for service of process in Texas, was not authorized to do business in Texas, performed no helicopter operations in Texas, and did not recruit employees in Texas.

The deceased workers here in question, were not Texas residents, but were all United States citizens. They were hired by Williams-Sedco-Horn, in Houston, Texas, and sent to Peru to work on the pipeline. The workers were killed in crash of a Bell helicopter, owned and operated by Helicol in Peru, during their transportation pursuant to the contract between Helicol and Williams-Sedco-Horn.

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<sup>1</sup> Williams-Sedco-Horn is a joint venture composed of Williams International Sundamericana, Ltd., a Delaware corporation headquartered in Tulsa, Oklahoma, Sedco Construction Corporation, a Texas corporation, and Horn International, Inc., a Texas corporation.

In addition to negotiating this contract, Helicol committed all of the following acts in Texas:

- a. Purchased substantially all of its helicopter fleet in Fort Worth, Texas;
- b. Did approximately \$4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of \$50,000 per month with Bell Helicopter Company, a Texas corporation;
- c. Negotiated in Houston, Harris County, Texas, with a Texas resident, which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action (previously mentioned), and wherein Helicol agreed to obtain liability insurance payable in American dollars to cover a claim such as this;
- d. Sent pilots to Fort Worth, Texas to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia;
- e. Sent maintenance personnel and pilots to Texas to be trained;
- f. Had employees in Texas on a year-round rotation basis;
- g. Received roughly \$5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and
- h. Directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question. (Involved leasing of a large helicopter capable of moving heavier loads for Williams-Sedco-Horn.)

We hold that these contacts constitute sufficient minimum contacts to find Helicol amenable to the jurisdiction of the Texas courts.

In their briefs before this Court, all parties agreed that our opinion in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977) controlled the disposition of this case.

In *U-Anchor*, we stated:

Article 2031b provides that a nonresident entering into a contract with a Texas resident performable in part by either party in Texas shall be deemed to be doing business in Texas. . . . We agree that in this respect, as well as with the respect to 'other acts that may constitute doing business,' Article 2031b reaches as far as the federal constitutional requirements of due process will permit. We let stand the statement in *Hoppenfeld v. Crook*, 498 S.W.2d 52 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 'that the reach of Art. 2031b is limited only by the United States Constitution.' . . . Furthermore, such a construction is desirable in that it allows the courts to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.'

In the *U-Anchor* opinion we specifically adopted the above language from *Hoppenfeld*. Also in *U-Anchor*, this Court approved the three-prong test set out in *O'Brien v. Lanpar Company*, 399 S.W.2d 340 (Tex. 1966). That three-prong test is:

- (1) the nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- (2) the cause of action must arise from, or be connected with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice; consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

The second prong of the *O'Brien* test requiring that the cause of action must arise out of the contacts with the forum state, has been the subject of some controversy ever since the *O'Brien* test was adopted. The second prong is useful in any fact situation in which a jurisdiction question exists; and is a

necessary requirement where the nonresident defendant only maintained single or few contacts with the forum. However, the second prong is unnecessary when the nonresident defendants presence in the forum through numerous contacts is of such a nature, as in this case, so as to satisfy the demands of the ultimate test of due process. Accordingly through the statutory authority of Art. 2031b TEX. REV. CIV. STAT. ANN. there remains the single inquiry: is the exercise of jurisdiction consistent with the requirements of due process of law under the United States Constitution? This inquiry is frequently put into the following terms: ". . . due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

The U.S. Supreme Court has broadened the parameters of due process to allow inquiry into other "relevant factors." Recently in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Supreme Court reiterated that the relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." Citing, *International Shoe*, supra. In looking to this reasonableness, the U.S. Court stated that the burden on the defendant:

. . . while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 2 L.Ed.2d 223, 78 S.Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, [436 U.S.] at 92, 56 L.Ed.2d 132, 98 S.Ct. 1690, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, c.f. *Shaffer v. Heitner*, 433 U.S.

186, 211, n. 37, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court*, *supra*, at 93, 98, 56 L.Ed.2d 132, 98 S.Ct. 1690.

*Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. at 291. Therefore, our inquiry can go beyond the substantial contacts which Helicol maintains in Texas, and we may also look to this State's interest in adjudicating the dispute; and Hall's interest in effective and convenient relief.

Texas has an interest in adjudicating this dispute. Hall is not a Texas resident, but is a citizen of this country. More importantly, Hall was hired in Houston, Texas, by a Texas resident. It cannot be questioned that this forum has an interest in protecting the employees of its "residents" (Williams-Sedco-Horn). This is especially necessary in light of the fact that Texas is the headquarters of countless international companies, and as a member of the "interstate judicial system," this State has an interest in obtaining the most efficient resolution of controversies and in furthering fundamental substantive social policies. (See above quote, citing *Kulko v. California Superior Court*, *supra*.)

Hall has a genuine interest and desire in obtaining convenient and effective relief. The U.S. Supreme Court directly considered the plaintiff's interest involved in *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). In *McGee*, a California resident was suing a Texas insurance company as a beneficiary under a life insurance policy. The defendant's only contact with California had been its mailing of the policy to the state, and its receipt of premium payments from the decedent. The U.S. Supreme Court addressed the relative convenience of the parties and based their decision allowing maintenance of the suit in California on the State's interest in providing effective redress, and the fact that an individual claimant could not overcome the difficulties of maintaining an action in a foreign forum ". . . thus in effect making the company judgment

proof." 355 U.S. at 223. The Court did recognize the inconvenience that this worked on the defendant, but based on the contacts of the defendant, due process would not be offended. Admittedly this cause does not fall precisely within the facts of *McGee*, it does fall within its spirit.

Based on the considerations of the above discussion and looking to the requirements of the *U-Anchor* test, we find that Helicol's numerous and substantial contacts do constitute "doing business" in this State and the trial court's actions do not offend due process.

The judgment of the court of civil appeals is reversed and the judgment of the trial court is affirmed.

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JAMES P. WALLACE  
Justice

Concurring opinion by Justice Campbell in which Justice McGee joins. Dissenting opinion by Justice Pope in which Chief Justice Greenhill and Justice Barrow join.

OPINION DELIVERED: July 21, 1982

## IN THE SUPREME COURT OF TEXAS

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No. C-243

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ELIZABETH HALL, *et al.*,*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

("HELICOL"),

*Respondent.*

---

FROM HARRIS COUNTY FIRST DISTRICT

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ON MOTION FOR REHEARING  
CONCURRING OPINION

I concur with the result of the opinion by Justice Wallace for these additional reasons.

The issue in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), was "whether, consistently with the due process clause of the Fourteenth Amendment, an Oklahoma court may exercise in personam jurisdiction over a non-resident automobile retailer and its wholesale distributor in a products liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an automobile accident in Oklahoma." *Id.* at 287. The question before this Court is whether, consistently with the due process clause of the Fourteenth Amendment, a Texas court may exercise in personam jurisdiction over a non-resident provider of helicopter services, when the defendant's connections with Texas were all of those listed in the opinion by Justice Wallace.

In *World-Wide*, there was no evidence that World-Wide or its retail distributor, Seaway, did any business in Oklahoma, shipped or sold any products to or in that state, had an agent to receive process there, or purchased advertisements in any

media calculated to reach Oklahoma. During oral arguments before the U.S. Supreme Court, plaintiff's attorney conceded there was no showing that any automobile ever sold by World-Wide or Seaway had ever entered Oklahoma with the single exception of the car involved. *Id.* at 289. Thus, World-Wide holds that driving a car through a state is not such "minimum contacts" to give that state jurisdiction in an action against a New York seller.

In reaching this decision, the U.S. Supreme Court stated: Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the state. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

444 U.S. at 295.

Applying that same language to the facts of this case, I would write: Helicol carries on much business in Texas. They close many purchases of helicopters and spare parts and negotiate contracts in Texas. They regularly secure the services of Bell Helicopter in training their pilots and repair technicians. They solicited business in Texas by sending a representative to Houston to negotiate with Williams-Sedco-Horn. The record shows they regularly buy helicopters and spare parts in Texas and seek Texas services for training their employees. They directly secure the services of the Texas markets, maintain employees in Texas on a year-round basis and 26 times sent officials of their company to Texas. This activity has continued since 1970. In this multi-million dollar business in Texas, Heli-

col has availed itself of the privileges and benefits of Texas law. In short, our petitioners seek to base jurisdiction on many significant contacts in Texas that reflect a continuous general presence in Texas.

The U.S. Supreme Court, in *World-Wide*, was addressing the jurisdictional problem between states. However, we do not have the same problem as *World-Wide*. We do not have a dispute over jurisdiction between coequal sovereigns in a federal system. We are deciding jurisdiction between countries; as to citizens of the United States and a resident of Colombia. Therefore, our "due process" application must be broader in scope.<sup>1</sup>

Now, let us look at what *World-Wide* said about "minimum contacts" and reasonableness of the "forum" among the states, and apply those tests to our facts:

The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their statutes as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, [326 U.S.] at 316, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057,

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<sup>1</sup> On September 17, 1982, after Helicol's motion for rehearing was filed, the Clerk of the Court advised West Publishing Company by letter that the language: "Therefore, our 'due process' application must be broader in scope" was removed from the opinion and the following language was substituted: "Therefore 'due process' in this case must be universal in its application."

quoting *Miliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed. 278, 61 S. Ct. 339, 132 A.L.R. 1357 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U.S. at 317, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.* 355 U.S. 220, 223, 2 L. Ed. 2d 223, 78 S. Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, [436 U.S.] at 92, 56 L. Ed. 2d 132, 98 S. Ct. 1690, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court*, [436 U.S.] at 93, 98, 56 L. Ed. 2d 132, 98 S. Ct. 1690.

444 U.S. at 291-92.

The contacts of Helicol in Texas were not "minimal," they were "substantial." It is not unreasonable to require a company with the expertise in international business, as Helicol, to defend a suit in a state where it has conducted multi-million dollars of business. However, it is unreasonable to require the widows and children seeking relief here to go to a foreign country to prosecute their action.

This Court has an interest in adjudicating the dispute of these United States citizens. They do not have the power to select another state but must be removed to a foreign country. This Court has an interest in assuring these plaintiffs obtain convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum country.

"Due process" is not a rigid, unchanging rule that courts could always determine by an unchanging formula. The concept of "due process" is designed to meet the test of change and to protect the rights of American citizens in the 1980's, as it did when the Constitution was written. In *World-Wide*, it was stated:

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee v. International Life Ins. Co.*, *supra*, at 222-223, 2 L. Ed. 2d 223, 78 S. Ct. 199, this trend is largely attributable to a fundamental transformation in the American economy:

"Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in *McGee*, of course, have only accelerated in the generation since that case was decided.

444 U.S. at 292-93.

The quote from *McGee* is as applicable to the facts of this case as it was to the *McGee* facts. It could be written: Today many commercial transactions touch two or more countries and may involve parties separated by continents or oceans. With this increasing internationalization of commerce has come a great increase in the amount of business conducted by mail and satellite communications across continental lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a country where he engages in economic activity.

The *McGee* court further stated: "Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing

which amounts to a denial of due process." 355 U.S. at 224. In my opinion, the inconvenience to Helicol, considering their substantial contacts in Texas, is certainly nothing which amounts to a denial of due process.

In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Supreme Court, in explaining the requirements of due process, stated:

The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but *it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.*

[Emphasis added].

357 U.S. at 253.

This Court, in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), tested the jurisdiction of Texas courts over the Oklahoma resident by stating:

[T]he contacts of Burt with Texas are minimal and fortuitous, and he cannot be said to have "purposefully" conducted activities within the State. Burt's contacts with Texas were not grounded on any expectation or necessity of invoking the benefits and protections of Texas law, nor were they designed to result in profit from a business transaction undertaken in Texas. The contract was solicited, negotiated, and consummated in Oklahoma, and Burt did nothing to indicate or to support an inference of any purpose to exercise the privilege of doing business in Texas. Simply stated, Burt was a passive customer of a Texas corporation who neither sought, initiated, nor profited from his single and fortuitous contact with Texas.

553 S.W.2d at 763.

Applying the *U-Anchor* test and using the *U-Anchor* language, I find Helicol's contacts are numerous and not fortuitous, as Helicol purposefully conducted activities within the state. Helicol's contacts with Texas were grounded on the

expectation, or necessity, of invoking the benefits and protections of Texas law; and they were designed to result in profit from a business transaction undertaken in Texas. The contracts and contacts were solicited or negotiated in Texas and some consummated in Texas. Helicol's activities, therefore, did more than indicate or support an inference of purposefully exercising the privilege of doing business in Texas. Helicol was an active customer of Texas corporations and companies who sought, initiated, and hopefully profited from its many and purposeful contacts with Texas.

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ROBERT M. CAMPBELL  
Justice

Justice McGee joins in this concurring opinion.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

\_\_\_\_\_  
No. C-243  
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ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
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\_\_\_\_\_  
FROM HARRIS COUNTY, FIRST DISTRICT  
\_\_\_\_\_

DISSENTING OPINION

I respectfully dissent. Jurisdiction was originally exercised in this case over Helicol, a nonresident defendant, on a cause of action that arose in South America. The suit was brought by Hall and others, all residents of states other than Texas. In our original opinion, we held that the exercise of jurisdiction over Helicol was improper and violated the requirements of due process. Significant in that holding was the fact that the underlying cause of action, concerning the crash of a helicopter in Peru, was unrelated to Helicol's contacts with Texas. We concluded that, absent a showing of the defendant's “general business presence” in this state, created by “substantial and continuous activity,” jurisdiction based upon contacts unrelated to the cause of action was unconstitutional.

For reasons expressed in our original opinion, and for additional reasons that have become clear on rehearing, I remain convinced that jurisdiction should not be exercised in this case, and that the original opinion should be retained as the opinion of this court. That opinion was at least an attempt to define standards clarifying the vague and uncertain statutory and constitutional boundaries of *in personam* jurisdiction. The rehearing opinion, on the other hand, ignores the need for

standards, and will very likely enhance rather than alleviate the confusion surrounding this difficult area of the law.

#### Article 2031b and Unrelated Contacts

In our earlier opinion, we stated that article 2031b, the Texas "long-arm" statute, reaches to the full extent permitted by the Constitution, authorizing the exercise of jurisdiction over a nonresident defendant whenever doing so is consistent with due process. We were concerned with avoiding technical distinctions as to what is and what is not "doing business." We concluded that the "catch-all" language in the statute—"without including other acts that may constitute doing business"—extended coverage of the term essentially to all activity a nonresident might perform in the state, and that the only remaining determination in jurisdiction cases should be whether asserting jurisdiction is constitutional. While it still seems correct to say that the term "doing business" should be defined broadly, reexamination on rehearing of our original analysis indicates that it is nevertheless incorrect to conclude that article 2031b reaches as far as due process permits. As explained in a series of Federal Fifth Circuit opinions beginning with *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), due process is broader than statutory boundaries of jurisdiction in Texas because the Constitution will sometimes permit a state to assert jurisdiction over a nonresident defendant who has contacts with the state unrelated to the cause of action being asserted. See *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) (general jurisdiction based upon "substantial and continuous activity"). Article 2031b, on the other hand, expressly limits the exercise of personal jurisdiction to causes of action *arising out of* activities or business done within the state. *Prejean v. Sonatrach, Inc.*, *supra* at 1265. See also *Jim Fox Enterprises, Inc. v. Air France*, 664 F.2d 63, 63-64 (5th Cir. 1981); *Placid Investments, Ltd. v. Girard Trust Bank*, 662 F.2d 1176, 1178 (5th Cir. 1981). Stated differently, article 2031b requires that there always be a *nexus* between the cause of action and the contacts relied

upon to justify jurisdiction, while due process does not always demand that such a nexus be shown.

The source of the nexus requirement in Texas is the clear wording of the statute itself. Section 3 of article 2031b provides:

Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made *upon causes of action arising out of such business done in this State*, the act or acts of engaging in such business within the State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or nonresident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings *arising out of such business done in this State*, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (emphasis added).<sup>1</sup> This statute determines the length that the "long

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<sup>1</sup> Section 2 of article 2031b also requires a nexus, although this section was not the basis for exercise of jurisdiction in the present case. Section 2 provides:

When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party *arising out of such business*, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in

arms" of Texas jurisdiction may extend. The quoted language unambiguously confines that reach to suits arising out of contacts with the state.

Nothing in the development of article 2031b indicates that the nexus requirement should be disregarded. The statute was enacted in the wake of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which greatly expanded the jurisdictional potential of the various states. The Supreme Court reasoned in *International Shoe* that the exercise of jurisdiction over a nonresident defendant satisfies due process when the defendant has had "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316. This standard was broader in its effect than the "long-arm" statutes then employed in most states, including Texas.<sup>2</sup> Most states, like Texas, responded to the action of the Supreme Court by enacting new statutes aimed at taking advantage of the expanded limits of potential jurisdiction. Yet, while the reach of a particular statute could always be coextensive with constitutional

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charge of such business shall forthwith be sent to the defendant or to the defendants [sic] principal place of business by registered mail, return receipt requested.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 2 (emphasis added).

<sup>2</sup> Article 2031b became effective August 10, 1959. Prior to that time, Texas had no general jurisdictional statute. Instead, jurisdiction was based upon a nonresident motorist statute, TEX. REV. CIV. STAT. ANN. art. 2039a, and upon several statutes applying to nonresidents in specific circumstances, such as TEX. INS. CODE ANN. arts. 3.65, 3.66, 21.38 § 6; TEX. BUS. CORP. ACT ANN. arts. 2.11, 8.10; TEX. NON-PROFIT CORP. ACT ANN. art. 8.09; TEX. REV. CIV. STAT. ANN. arts. 2031, 2031a, 2032, 2033, 2033b. See Thode, *In Personam Jurisdiction: Article 2031b, The Texas "Long Arm" Jurisdiction Statute: And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 304 n.165 (1964) [hereinafter cited as Thode].

confines outlined by the Supreme Court, states were not compelled to assert jurisdiction that far. *See Perkins v. Benguet Consolidated Mining Co., supra* at 440; *Prejean v. Sonatrach, Inc., supra* at 1264; Thode, *supra* at 304. Some states took advantage of the full range of jurisdiction allowed. *See, e.g.,* FLA. STAT. ANN. § 48.081(5) (allowing jurisdiction over unrelated causes of action when a foreign corporation has a "business office" in the state and engages in the transaction of business there); WIS. STAT. ANN. § 801.05(1) (jurisdiction over unrelated causes of action permitted when an individual carries on "substantial and not isolated activities" in the state). *See also* UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02 (jurisdiction may be asserted as to unrelated causes of action when a defendant has his principal place of business in the state). Others wrote more restrictive statutes. Texas included the requirement that the jurisdiction be limited to causes of action arising from local activity.<sup>3</sup>

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<sup>3</sup> The nexus requirement of article 2031b was contained in the original version of the act and has remained there unchanged since enactment. Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 747 (1976). The statute is thought to have been adapted from the 1947 Vermont "long-arm" statute, which also contains a nexus requirement. The pertinent portion of that statute provides:

If a foreign corporation makes a contract with a resident of Vermont to be performed in whole or in part by either party in Vermont, or if such foreign corporation commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed to be doing business in Vermont . . . and shall be deemed equivalent to the appointment . . . of the secretary of state of Vermont . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings . . . arising from or growing out of such contract or tort . . .

VT. STAT. ANN. title 12, § 855, *quoted in Thode, supra* at 305 n.167 (emphasis added). Other statutes adopted with similar provisions include: ILL. REV. STAT. ch. 110, § 17(1); MD. ANN. CODE,

Jurisdiction statutes stand as expressions of a state's interest, and the limits of that interest, in acquiring jurisdiction over nonresident defendants.<sup>4</sup> In this way, article 2031b may

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Courts and Judicial Proceedings, § 6-103; N.Y. CIV. PRAC. LAW § 302; OHIO REV. CODE ANN. § 2307.382. See also *Precision Polymers, Inc. v. Nelson*, 512 P.2d 811, 813 (Okla. 1973) (construing OKLA. STAT. title 12, §§ 187, 1701.03):

Under the above holding if it does not appear from the record that plaintiff's cause of action arises out of or is based upon the same acts of defendant alleged to confer jurisdiction in *personam* of the defendant, plaintiff may not invoke the provisions of § 187, *supra*, to acquire jurisdiction of defendant. This holding is in harmony with the language of § 187, which limits its application "to any cause of action arising, or which shall have arisen, from doing any" of the acts therein enumerated.

The Oklahoma statute requires a nexus notwithstanding the fact that the act has been construed to extend to constitutional limits. See *Roberts v. Jack Richards Aircraft Co.*, 536 P.2d 353, 355 (Okla. 1975).

<sup>4</sup> The United States Supreme Court has frequently looked to jurisdiction statutes to determine the extent of a state's expressed interest in acquiring jurisdiction over a particular lawsuit. In *Hanson v. Denckla*, 357 U.S. 235, 252 (1958), the Court distinguished the previous case of *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), by stating:

This case is . . . different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647-49; *Doherty & Co. v. Goodman*, 294 U.S. 623, 627; *Hess v. Pawloski*, 274 U.S. 352.

See also *Kulko v. California Superior Court*, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by, e.g., enacting a special jurisdictional statute."); *Iowa Electric Light and Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979); Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1345 (1980).

be seen as a reflection of Texas' interest, as expressed by the legislature, in assuming jurisdiction over suits arising out of acts done in this state.<sup>5</sup> A desire to gain jurisdiction over nonresidents for *unrelated* actions arising from activities outside the state is not reflected in the history of the statute or in the act's clear and unambiguous wording. Certainly, the legislature could have drafted the statute in language expressly extending its effect to the full extent permitted by the Constitution, as it did in TEX. FAM. CODE ANN. § 3.26 (permitting the exercise of jurisdiction over a nonresident respondent "if there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction"), or it could have simply left out in the nexus requirement, as in TEX. BUS. CORP. ACT ANN. art. 8.10 (providing for service of process on foreign corporations authorized to transact business in the state). Absent such legislative action, however, we must enforce the clear provisions of article 2031b as presently written. *See generally Fox v. Burgess*, 157 Tex. 292, 297, 302 S.W.2d 405, 409 (1957); 2A

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<sup>5</sup> This is another way of saying that the legislature has expressed an interest in providing a forum for state residents who are injured by activities of nonresidents performed within the state's boundaries, and to require that the nonresident bear the costs of injuries caused by their activities in the state. That these considerations were factors in the drafting of the provisions of article 2031b is reflected indirectly in one commentator's call for legislative action prior to the enactment of the statute. *See* Wilson, *In Personam Jurisdiction Over Non-Residents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363 (1957). The proposed draft of a statute included by Professor Wilson in his article contained a nexus requirement identical to the one found in article 2031b. This proposed draft is considered by some to have served as a model for the first five sections of the statute adopted by the legislature. Thode, *supra* at 303 n.151.

SUTHERLAND ON STATUTORY CONSTRUCTION  
§ 46.04 (4th ed. 1973).<sup>6</sup>

Those who insist that the nexus requirement in article 2031b should be ignored rely upon *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), *cert. denied*, 434 U.S. 1063 (1978), as authority for the idea that the statute should extend to "constitutional limits." This court used that broad language in its opinion in *U-Anchor*, but it is evident from the facts and context of that case that the defendant's contacts with Texas formed the very basis for the cause of action sued upon. Therefore, the nexus requirement was satisfied and the court did not need to deal with that issue. Instead, the court examined the statutory definition of "doing business" located in section 4 of

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<sup>6</sup> It has been contended that the statute, article 2031b, was originally enacted to extend Texas "long-arm" jurisdiction to the full limits allowed after *International Shoe*, and that, if constitutional limits were actually broader than the legislature then believed, or if those limits have since been expanded, the statute's scope should likewise be enlarged in order to reach to the maximum extent possible. This argument is defective, however, for several reasons. First, article 2031b was enacted after *Perkins v. Benguet Consolidated Mining Co.*, *supra*, which very clearly stated that states could, in certain instances, exercise jurisdiction over unrelated causes of action. 342 U.S. at 445-47. Second, even assuming that article 2031b was initially intended to be coextensive with due process, and due process was at that time believed to always require a nexus, we cannot assume that the drafters would have extended the statute to constitutional limits had the true limits been known, or when the limits were expanded. Perhaps the legislature was willing to extend article 2031b to constitutional limits only so long as a nexus was required. Finally, statutes drafted and enacted in other states near the time that article 2031b was written contained provisions authorizing the exercise of jurisdiction over unrelated causes of action in some cases, indicating that at least some legislatures had the idea that such an exercise of jurisdiction was constitutional. See, e.g., MD. ANN. CODE, Courts and Judicial Proceedings, § 6-102; WIS. STAT. ANN. § 801.05(1).

the act and, relying upon the "catchall" language of that section, construed the term "doing business" as broadly as the constitution would permit.<sup>7</sup> In a sense, therefore, the court did extend the statute to constitutional limits by substituting the constitutional "minimum contacts" standard for the more restrictive "tort or contract" definition of "doing business." In other words, the inquiry in jurisdiction cases after *U-Anchor* became whether a defendant had had "minimum contacts" with this state, rather than whether he had committed a tort or entered into a contract here. While this construction expanded the scope of the statute to constitutional limits in the sense of section 4, however, it can in no way be seen to have affected the requirement in sections 2 and 3 that the cause of action "arise out of" the contacts with the forum.

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<sup>7</sup> The idea that article 2031b should "extend to constitutional limits" seems to have been lifted by the court from the comments of Professor Thode, *supra*. Like the court in *U-Anchor*, Thode spoke of expanding the statute in the context of defining "doing business." He stated: "[T]he specific language pertaining to contracts and torts is sufficiently broad to encompass all constitutionally permissible suits in these two areas of the law." *Id.* at 307. Concerning the "catchall" phrase used by the court in *U-Anchor* to accomplish the broadening of article 2031b to constitutional limits, Thode remarked:

Does article 2031b provide for jurisdiction in the many areas of law other than tort or contract wherein a lawsuit could arise against a nonresident defendant? The answer lies in the fact that section 4 also includes a catch-all clause. . . . The wording [of the clause] is ambiguous, but the other purpose is clear. The words "without including other acts that may constitute doing business" could be construed to mean that no other acts are to be included within the jurisdictional reach of article 2031b. But the obvious meaning, and the one consistent with the whole purpose of the act, is that this catchall language is intended to expand the jurisdictional scope of the statute to constitutional limits "without including other acts" in the specific description of acts that fall within the purview of the article 2031b.

*Id.* at 307-08.

It is well established that the threshold inquiry in any *in personam* jurisdiction case is whether statutory requirements have been met. Only if the exercise of jurisdiction in a given instance is within the scope of statutory authority is the constitutionality of that exercise ever at issue. *Prejean v. Sonatrach, Inc.*, *supra* at 1264; *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 196 (5th Cir. 1980); *Pizza Inn, Inc. v. Lumar*, 513 S.W.2d 251, 253 (Tex. Civ. App.—Eastland 1974, writ ref'd n.r.e.). The exercise of jurisdiction over Helicol in this tort action was *beyond* the scope of authority defined by article 2031b. The tort sued upon did not occur in Texas; it occurred in South America, and arose purely out of Helicol's transacting business there. Helicol has had contacts with Texas, but there has been no allegation or proof that the purchase of helicopters in Fort Worth or the negotiation of a contract in Houston in any way caused the crash in Peru. Put simply, the contacts of Helicol with Texas did not give rise to the cause of action being asserted, and the nexus requirement contained in article 2031b has not been met. Absent this statutory authorization, jurisdiction may not be asserted.

The statement that jurisdiction may not be exercised over Helicol because the cause of action is not related to the forum contacts is true *regardless* of the extent or quality of Helicol's unrelated contacts. In *Prejean v. Sonatrach, Inc.*, *supra*, one defendant, Beech, had extensive contacts with Texas, all unrelated to the cause of action. These contacts were remarkably similar to Helicol's activities in Texas, but were much more extensive. For example, Beech entered into an \$11.1 million subcontract with Bell Helicopter in Fort Worth for the production of airframe assemblies, and had produced these for Bell continuously since 1967 under contracts exceeding \$72 million. *Id.* at 1270 n.19. In addition, Beech had two employees residing and conducting business in Texas. A local corporation wholly owned by the defendant had sold and serviced aircraft manufactured by Beech. Notwithstanding these contacts, which quite obviously constituted "doing business" in Texas, the court concluded that jurisdiction could not be asserted

because the activities were not shown to have the "slightest causal relationship with the decedent's wrongful death." *Id.* at 1270.

In *Jim Fox Enterprises, Inc. v. Air France*, 664 F.2d 63 (5th Cir. 1981), the defendant, Air France, was doing "a thriving business in Texas." *Id.* at 65. It had a ticket office at Houston's Intercontinental Airport and a district sales office downtown. It listed six local telephone numbers in the Houston telephone directory, leased Texas real estate, employed Texas residents, and paid Texas employment and personal property taxes. Gross receipts from passenger ticket sales in Texas totalled in excess of \$59 million. Nevertheless, the court in *Jim Fox* recognized that article 2031b requires a nexus between the cause of action and the contacts with Texas, and that Air France's contacts, being unrelated to the cause of action, were insufficient to support jurisdiction.

In another case, *Placid Investments, Ltd. v. Girard Trust Bank*, 662 F.2d 1176 (5th Cir. 1981), it was undisputed that the defendant did business in Texas. As noted by the court, the defendant maintained bank accounts in Texas, owned Texas real estate, and received revenue from Texas sources. *Id.* at 1178. None of these contacts, however, "gave rise" to the cause of action. As a result, the court concluded, the causal relationship or nexus requirement in article 2031b was not met, and jurisdiction could not be asserted.

Put simply, the boundaries of jurisdiction authorized by article 2031b are more restrictive than those defined by due process. If the state has an interest in asserting jurisdiction over suits unrelated to activity performed in the state, the legislature should act to extend the reach of the statute. Until the legislature does act, however, we must enforce the clear provisions of the present statute. Enforcement of that statute in the present case yields the result that Helicol was not subject to the jurisdiction of this state on the asserted cause of action. I would, therefore, affirm the judgment of the court of civil appeals, as this court did in the first opinion.

### Due Process

Because I believe that the requirements of article 2031b were not met in this case, I would not reach the constitutional question. Even if article 2031b authorized the exercise of jurisdiction, however, I would still conclude, as the court concluded in its original opinion, that the exercise of jurisdiction over Helicol exceeded the limits imposed by due process.

As stated in the initial discussion, the Constitution will sometimes permit a state to exercise jurisdiction over a nonresident defendant for causes of action *unrelated* to the defendant's contacts with the forum. To state this fact, however, is to state the exception and not the rule. Generally, a defendant's contacts with the forum state will only support the power to adjudicate with respect to issues arising from the very controversy sued upon. *L. D. Reeder Contractors v. Higgins Industries*, 265 F.2d 768, 773-75 (9th Cir. 1959); *von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) (hereinafter cited as *von Mehren & Trautman*); *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 35(1) (1971). Only when the defendant has established a general business presence in the state, characterized by "substantial and continuous activity," may the state assume jurisdiction over the defendant for unrelated causes of action. *Perkins v. Benguet Consolidated Mining Co.*, *supra* at 438, 445, 448; *O'Neal v. Hicks Brokerage Co.*, 537 F.2d 1266, 1268 (4th Cir. 1976); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 585-86 (1st Cir. 1970); *W. H. Elliott & Sons Co. v. Nuodex Products Co.*, 243 F.2d 116, 122 (1st Cir.), *cert. denied*, 355 U.S. 823 (1957). See also *R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS* 145 (2d ed. 1980); *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 35(3) (1971).\*

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\* The reason for placing emphasis upon contacts related to the cause of action has to do with the need to show a state interest in

The term "substantial and continuous activity" has a distinct meaning when used in the context of due process analysis. It suggests that the individual or corporate defendant is enough

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assuming jurisdiction over the nonresident defendant. As explained in *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 346-47 (5th Cir. 1966): "There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives that State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum."

The United States Supreme Court had made it clear that a state's interest in subjecting a nonresident to its judicial jurisdiction is a fundamental factor to be considered in cases of this kind. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the interest of the state was obvious in that the suit was brought by the state itself, for unpaid taxes. In *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957), the validity of the exercise turned upon California's paramount interest in the litigation. The Court noted the state's manifest interest in protecting its residents, stating: "These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State." In *Hanson v. Denckla*, 357 U.S. 235, 251-52 (1958), the Court emphasized the absence of a substantial state interest, distinguishing *McGee*. The Court explained:

The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee International Life Ins. Co.*, 355 U.S. 220, and the cases there cited. In *McGee*, the nonresident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.

Contrary to this court's conclusion on rehearing that Texas has an interest in adjudicating this case because the plaintiffs are United

of an "insider" in the forum that he may be safely relegated to the state's political processes. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 87 (1980). Achievement of such a position obviously requires more of the defendant than "minimum contacts." Instead, the defendant must establish some close substantial connection with the state approaching the relationship between the state and its own residents.<sup>9</sup> It was upon such a basis—the defendant's operating temporary corporate headquarters in the forum state—that the Supreme Court upheld the exercise of jurisdiction over an unrelated

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States citizens, cases demonstrate that state interest in litigation is consistently derived from a state's desire to protect its own citizens and property and to effectuate its own regulatory policies. *See, e.g.*, *Blount v. Peerless Chemicals, Inc.*, 316 F.2d 695, 697 (2d Cir.), *cert. denied*, 375 U.S. 881 (1963); *Compania de Astral v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). *See also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1343, 1345 (1980).

<sup>9</sup> This relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principal place of business for the defendant. *See Seymour v. Parke, Davis & Co.*, *supra* at 587: "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have no question of the right of the state to subject the defendant to suit for unconnected causes of action." *See also* Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960 (1981); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35, comment e (1971): "The individual's activities in the State may . . . be so continuous and substantial as to justify the exercise of judicial jurisdiction over him as to causes of action arising from activities in other states. This is particularly likely to be true in a situation where the individual's principal place of business is in the State."

cause of action in *Perkins v. Benguet Consolidated Mining Co.*, *supra*.<sup>10</sup>

This court, on rehearing of the present case, would consider the nexus between the cause of action and the forum contacts a necessary requirement only in cases involving "single or few" contacts with the forum state. The court remarks that a nexus is "unnecessary when the nonresident defendant's presence in the forum through numerous contacts is of such nature, as in this case, so as to satisfy the demands of the ultimate test of due process." The "ultimate test of due process" then applied by the court is the "minimum contacts" standard. The error in this reasoning is that the nexus requirement is satisfied and becomes unnecessary not upon a showing of "minimum contacts," but upon a demonstration of the defendant's *substantial* and *continuous* activity in the forum. Absent a showing of such activity, the nexus requirement becomes a highly significant factor. Given the additional fact that the forum has no other basis for establishing its interest in the lawsuit, such as by residence of the plaintiff, *see Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d

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<sup>10</sup> As stated in von Mehren & Trautman, *supra* at 1144:

Given the facts of the case, the [Perkins] decision can be regarded as approving the forum utilized as a surrogate for the place of incorporation or head office. Against the backdrop of increasingly refined thinking about specific jurisdiction to adjudicate, and despite the Ohio court's language on remand, the *Perkins* case should be regarded as a decision on its exceptional facts, not as a significant reaffirmation of obsolescing notions of general jurisdiction.

*See also Seymour v. Parke, Davis & Co.*, *supra* at 587 (limiting *Perkins* to its facts); Newton, *Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980) ("The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.").

745 (4th Cir. 1971), the nexus requirement becomes controlling. No state should assume jurisdiction over a case involving a nonresident plaintiff and defendant when the cause of action arises out of facts totally unrelated to the forum state.

A separate concurrence filed on rehearing contends that the "long-arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due process than United States citizens, *cf. Plyler v. Doe*, 50 U.S.L.W. 4650 (1982); *Truax v. Raich*, 239 U.S. 33 (1915), it is nevertheless inconsistent with the way due process has been applied in previous cases. Although such a contention is rarely raised, cases dealing with jurisdictional issues invariably apply the same due process standards to citizens and noncitizens alike. *See, e.g., Jim Fox Enterprises v. Air France*, 664 F.2d 63 (5th Cir. 1981); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978); *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974); *Bryant v. Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439 (1965). *See also* A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW vol. II at 22 (1973) (neither party's citizenship affects an American court's jurisdiction).

Except for the purchase of helicopters and spare parts and the negotiation of a single contract to be performed in South America, Helicol conducted all of its business *outside* of the State of Texas. Nevertheless, the court has concluded that Helicol is subject to the jurisdiction of Texas courts for suits arising anywhere in the world. As a result, the court has established Texas as a "magnet" forum, drawing to its courts the trial of any lawsuit involving a defendant who has ever done business in Texas. Texas is now the courthouse for the world. I must conclude that this result is not only inconsistent with constitutional standards established in previous cases, but is

detrimental to the "fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *International Shoe Co. v. Washington*, *supra* at 39.

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JACK POPE  
Justice

Chief Justice Greenhill and Justice Barrow join in this dissent.

OPINION DELIVERED:

July 21, 1982

IN THE SUPREME COURT OF TEXAS

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No. C-243  
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ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

*Respondent.*

—  
FROM HARRIS COUNTY, FIRST DISTRICT  
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DISSENTING OPINION

I respectfully dissent. The former dissenting opinion handed down July 21, 1982, is withdrawn. The survivors of four nonresidents who were killed in an airplane crash in the jungles of Peru, have sued the defendant Helicol in Houston, Texas. Helicol is a resident corporation of Colombia, South America. Neither the plaintiffs, the decedents, the defendant, nor the tort action have any connection with Texas. The court makes Texas the courthouse for the world, requiring only that the plaintiff show that the defendant had made purchases of supplies from some unrelated business located in Texas. I disagree with the court's opinion, because it is not grounded upon the correct facts and because our long-arm statute reaches only to "causes of action arising out of such business done in this State." TEX. REV. CIV. STAT. ANN. art. 2031b.

The court mistakenly says that Williams-Sedco-Horn, a Texas joint venture, was the party that contracted with the Peruvian owned oil company, Petro Peru. The opinion also says that the defendant Helicol negotiated and made its agreement with Williams-Sedco-Horn in Houston, Texas. The true facts, as stated by the court of civil appeals are that Williams-Sedco-Horn was not the party who contracted either with the

Peruvian oil company or with Helicol. The undisputed testimony was that Peru forbade a contract to construct the pipeline with any corporation unless it was a Peruvian company. The contract, written in Spanish and approved by the government, was with Peruvian-based Consorcio, not Williams-Sedco-Horn. The parties to the contract for the helicopters were Consorcio and Helicol. The court of civil appeals so found and enforced that finding by its further reference to paragraph 19 of the contract, which states, in the words of that court, "that all parties agree that Lima, Peru, is the residence for all related to the contract and that the parties submitted to the jurisdiction of Peru." The court of civil appeals made these other significant findings:

It [Helicol] does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

#### **Article 2031b Requires a Nexus to Business Done in This State.**

Article 2031b expressly requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction. The nexus requirement in Texas is found in the clear wording of the statute itself. Section 3 of article 2031b provides:

Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon *causes of action arising out of such business done in this State*, the act or acts of engag-

ing in such business within the State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or nonresident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings *arising out of such business done in this State*, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (emphasis added).<sup>1</sup>

Article 2031b was enacted in the wake of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which greatly expanded the jurisdictional potential of the various states. The Supreme Court reasoned in *International Shoe* that the exercise of jurisdiction over a nonresident defendant satisfies due process when the defendant has had "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316. This standard was broader in its effect than the "long-

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<sup>1</sup> Section 2 of article 2031b also requires a nexus, although this section was not the basis for exercise of jurisdiction in the present case. Section 2 provides:

When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party *arising out of such business*, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants [sic] principal place of business by registered mail, return receipt requested.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 2 (emphasis added).

arm" statutes then employed in most states, including Texas.<sup>2</sup> Most states, like Texas, responded to the action of the Supreme Court by enacting statutes aimed at taking advantage of the expanded limits of potential jurisdiction. While the reach of a particular statute could always be coextensive with constitutional confines outlined by the Supreme Court, states were not compelled to assert jurisdiction that far. *See Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 440 (1952); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1264 (5th Cir. 1981). Some states took advantage of the full range of jurisdiction allowed. *See, e.g.*, FLA. STAT. ANN. § 48.081(5) (allowing jurisdiction over unrelated causes of action when a foreign corporation has a "business office" in the state and engages in the transaction of business there); WIS. STAT. ANN. § 801.05(1) (jurisdiction over unrelated causes of action permitted when an individual carries on "substantial and not isolated activities" in the state). *See also* UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02 (jurisdiction may be asserted as to unrelated causes of action when a defendant has his principal place of business in the state). Texas and other states wrote more restrictive stat-

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<sup>2</sup> Article 2031b became effective August 10, 1959. Prior to that time, Texas had no general jurisdictional statute. Instead, jurisdiction was based upon a nonresident motorist statute, TEX. REV. CIV. STAT. ANN. art. 2039a, and upon several statutes applying to nonresidents in specific circumstances, such as TEX. INS. CODE ANN. arts. 3.65, 3.66, 21.38 § 6; TEX. BUS. CORP. ACT ANN. arts. 2.11, 8.10; TEX. NON-PROFIT CORP. ACT ANN. art. 8.09; TEX. REV. CIV. STAT. ANN. arts. 2031, 2031a, 2032, 2033, 2033b. *See* Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long Arm" Jurisdiction Statute; And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 304 n.165 (1964) [hereinafter cited as Thode].

utes. Texas included the requirement that the jurisdiction be limited to causes of action arising from local activity.<sup>3</sup>

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<sup>3</sup> The nexus requirement of article 2031b was contained in the original version of the act and has remained there unchanged since enactment. Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 747 (1976). The statute is thought to have been adapted from the 1947 Vermont "long-arm" statute, which also contains a nexus requirement. The pertinent portion of that statute provides:

If a foreign corporation makes a contract with a resident of Vermont to be performed in whole or in part by either party in Vermont, or if such foreign corporation commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed to be doing business in Vermont . . . and shall be deemed equivalent to the appointment . . . of the secretary of state of Vermont . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings . . . arising from or growing out of such contract or tort . . .

VT. STAT. ANN. title 12, § 855, *quoted in Thode, supra* at 305 n.167 (emphasis added). Other statutes adopted with similar provisions include: ILL. REV. STAT. ch. 110, § 17(1); MD. ANN. CODE, Courts and Judicial Proceedings, § 6-103; N.Y. CIV. PRAC. LAW § 302; OHIO REV. CODE ANN. § 2307.382. See also *Precision Polymers, Inc. v. Nelson*, 512 P.2d 811, 813 (Okla. 1973) (construing OKLA. STAT. title 12, §§ 187, 1701.03):

Under the above holding if it does not appear from the record that plaintiff's cause of action arises out of or is based upon the same acts of defendant alleged to confer jurisdiction in personam of the defendant, plaintiff may not invoke the provisions of § 187, *supra*, to acquire jurisdiction of defendant. This holding is in harmony with the language of § 187, which limits its application "to any cause of action arising, or which shall have arisen, from doing any" of the acts therein enumerated.

The Oklahoma statute requires a nexus notwithstanding the fact that the act has been construed to extend to constitutional limits. *See Roberts v. Jack Richards Aircraft Co.*, 536 P.2d 353, 355 (Okla. 1975).

Jurisdiction statutes express the limits of a state's interest, in acquiring jurisdiction over nonresident defendants.<sup>4</sup> Article 2031b limits Texas' interest, to suits arising out of acts done in this state.<sup>5</sup> A desire to gain jurisdiction over nonresidents for

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<sup>4</sup>The United States Supreme Court has frequently looked to jurisdiction statutes to determine the extent of a state's expressed interest in acquiring jurisdiction over a particular lawsuit. In *Hanson v. Denckla*, 357 U.S. 235, 252 (1958), the Court distinguished the previous case of *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), by stating:

This case is . . . different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647-49; *Doherty & Co. v. Goodman*, 294 U.S. 623, 627; *Hess v. Pauloski*, 274 U.S. 352.

*See also* *Kulko v. California* Superior Court, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by, e.g., enacting a special jurisdictional statute."); *Iowa Electric Light and Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979); Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1345 (1980).

<sup>5</sup>This is another way of saying that the legislature has expressed an interest in providing a forum for state residents who are injured by activities of nonresidents performed within the state's boundaries, and to require that the nonresident bear the costs of injuries caused by their activities in the state. That these considerations were factors in the drafting of the provisions of article 2031b is reflected indirectly in one commentator's call for legislative action prior to the enactment of the statute. *See Wilson, In Personam Jurisdiction Over Non-Residents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363 (1957). The proposed draft of a statute included by Professor Wilson in his article contained a nexus requirement identical to the one found in article 2031b. This proposed draft is considered by some to have served as a model for the first five sections of the statute adopted by the legislature. Thode, *supra* at 303 n.151.

unrelated actions arising from activities outside the state is not reflected in the history of the statute or in the act's clear and unambiguous wording. Certainly, the legislature could have drafted the statute in language expressly extending its effect to the full extent permitted by the Constitution, as it did in TEX. FAM. CODE ANN. § 3.26 (permitting the exercise of jurisdiction over a nonresident respondent "if there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction"), or it could have left out the nexus requirement, as in TEX. BUS. CORP. ACT ANN. art. 8.10 (providing for service of process on foreign corporations authorized to transact business in the state). Absent such legislative action, however, we must enforce the clear provisions of article 2031b as presently written. *See generally Fox v. Burgess*, 157 Tex. 292, 297, 302 S.W.2d 405, 409 (1957); 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 46.04 (4th ed. 1973).<sup>6</sup>

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<sup>6</sup> It has been contended that the statute, article 2031b, was originally enacted to extend Texas "long-arm" jurisdiction to the full limits allowed after *International Shoe*, and that, if constitutional limits were actually broader than the legislature then believed, or if those limits have since been expanded, the statute's scope should likewise be enlarged in order to reach to the maximum extent possible. This argument is defective, however, for several reasons. First, article 2031b was enacted *after* *Perkins v. Benguet Consolidated Mining Co.*, *supra*, which held that states could, in rare instances, exercise jurisdiction over unrelated causes of action. 342 U.S. at 445-47. Second, even assuming that article 2031b was initially intended to be coextensive with due process, and due process was at that time believed to always require a nexus, we cannot assume that the drafters would have extended the statute to constitutional limits had the true limits been known, or when the limits were expanded. Perhaps the legislature was willing to extend article 2031b to constitutional limits only so long as a nexus was required. Finally, statutes drafted and enacted in other states near the time that article

Two prior opinions by this court hold that the nexus was required and in both cases, it was present. In *O'Brien v. Lanpar Company*, 399 S.W.2d 340, 342 (Tex. 1966), we upheld an Illinois default judgment against O'Brien, a nonresident Texas corporation whose president went to Illinois and employed the plaintiff as its attorney. We then stated this three-prong requisite for jurisdiction over a nonresident:

\* \* \* Such would appear to be: (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), was the next time this court wrote on this subject. U-Anchor, a Texas corporation, solicited a contract with defendant Burt in Oklahoma to place advertising displays at points along Oklahoma highways. Burt agreed to pay U-Anchor \$80.00 a month for 36 months and to make the payments at U-Anchor's office in Amarillo, Texas. We held that U-Anchor's cause of action against Burt satisfied the nexus required of article 2031b. We wrote that it was "connected with the contractual obligation assumed by Burt and partially performable in Texas." *Id.* at 762. We held, however, that Burt could not be sued in Texas because U-Anchor failed to satisfy

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2031b was written contained provisions authorizing the exercise of jurisdiction over unrelated causes of action in some cases, indicating that at least some legislatures had the idea that such an exercise of jurisdiction was constitutional. *See, e.g.*, MD. ANN. CODE, Courts and Judicial Proceedings, § 6-102; WIS. STAT. ANN. § 801.05(1).

the first and third requirements of *O'Brien*, *supra* at 763. As to the first requirement, we held that Burt's contacts with Texas were not purposefully conducted activities within Texas. Concerning the third requirement, we held that Burt's mailing of checks for payment to U-Anchor in Amarillo was a minimal contact. In contrast with those few contacts, we wrote that the solicitation, negotiation and consummation of the contract in Oklahoma showed that Burt might reasonably expect enforcement to be governed by Oklahoma rather than Texas law.

There is more reason here than in *U-Anchor* to deny Texas jurisdiction. The four plaintiffs worked for Consorcio. The contract fixed jurisdiction in Peru. Billings for work had to be made by Helicol to Consorcio in Peru. In *U-Anchor*, we held that Burt was no more than a passive customer of a Texas corporation, in that instance, the very party who was sued. In this case, however, Helicol has been pulled from Peru to Texas because it has been a customer of Bell Helicopter in Fort Worth. It had transactions with a company that in no way was connected with this litigation. *U-Anchor* is no support for the majority opinion.

The majority opinion disregards the statutory requirement that suit may be brought against a foreign corporation "upon causes of action arising out of such business done in this State."

The construction of article 2031b, here urged, conforms to that of the Fifth Circuit in several recent decisions. In *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), one defendant, Beech, had extensive contacts with Texas, all unrelated to the cause of action. These contacts were similar to Helicol's activities in Texas, but were much more extensive. For example, Beech entered into an \$11.1 million subcontract with Bell Helicopter in Fort Worth for the production of airframe assemblies, and had produced these for Bell continuously since 1967 under contracts exceeding \$72 million. *Id.* at 1270 n.19. In addition, Beech had two employees residing and conducting business in Texas. A local corporation wholly owned by the defendant had sold and serviced aircraft manufactured by

Beech. These contacts constituted "doing business" in Texas, but the court concluded that jurisdiction in Texas could not be asserted because the activities were unrelated to the cause sued upon. They did not have the "slightest causal relationship with the decedent's wrongful death." *Id.* at 1270.

In *Jim Fox Enterprises, Inc. v. Air France*, 664 F.2d 63 (5th Cir. 1981), the defendant, Air France, was doing "a thriving business in Texas." *Id.* at 65. It had a ticket office at Houston's Intercontinental Airport and a district sales office downtown. It listed six local telephone numbers in the Houston telephone directory, leased Texas real estate, employed Texas residents, and paid Texas employment and personal property taxes. Gross receipts from passenger ticket sales in Texas totalled in excess of \$59 million. Nevertheless, the court in *Jim Fox* recognized that article 2031b requires a nexus between the cause of action and the contacts with Texas, and that Air France's contacts, being unrelated to the cause of action, were insufficient to support jurisdiction.

In another case, *Placid Investments, Ltd. v. Girard Trust Bank*, 662 F.2d 1176 (5th Cir. 1981), it was undisputed that the defendant did business in Texas. As noted by the court, the defendant maintained bank accounts in Texas, owned Texas real estate, and received revenue from Texas sources. *Id.* at 1178. None of these contacts, however, "gave rise" to the cause of action. As a result, the Fifth Circuit concluded, the causal relationship or nexus requirement in article 2031b was not met, and jurisdiction could not be asserted.

#### Due Process

When a defendant has established a general business presence in the state, characterized by "substantial and continuous activity," that state may take jurisdiction over the defendant for unrelated causes of action. *Perkins v. Benguet Consolidated Mining Co.*, *supra* at 438, 445, 448; *O'Neal v. Hicks Brokerage Co.*, 537 F.2d 1266, 1268 (4th Cir. 1976); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 585-86 (1st Cir. 1970); *W. H. Elliott & Sons Co. v. Nuodex Products Co.*, 243

F.2d 116, 122 (1st Cir.), *cert. denied*, 355 U.S. 823 (1957). See also R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 145 (2d ed. 1980); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35(3) (1971).<sup>7</sup>

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<sup>7</sup> The reason for placing emphasis upon contacts related to the cause of action has to do with the need to show a state interest in assuming jurisdiction over the nonresident defendant. As explained in *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 346-47 (5th Cir. 1966); "There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives that State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum."

The United States Supreme Court had made it clear that a state's interest in subjecting a nonresident to its judicial jurisdiction is a fundamental factor to be considered in cases of this kind. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the interest of the state was obvious in that the suit was brought by the state itself, for unpaid taxes. In *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957), the validity of the exercise turned upon California's paramount interest in the litigation. The Court noted the state's manifest interest in protecting its residents, stating: "These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State." In *Hanson v. Denckla*, 357 U.S. 235, 251-52 (1958), the Court emphasized the *absence* of a substantial state interest, distinguishing *McGee*. The Court explained:

The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee International Life Ins. Co.*, 355 U.S. 220, and the cases there cited. In *McGee*, the nonresident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.

The term "substantial and continuous activity" has a distinct meaning when used in the context of due process. It suggests that the individual or corporate defendant is enough of an "insider" in the forum that he may be safely relegated to the state's political processes. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 87 (1980). Achievement of such a position requires more of the defendant than "minimum contacts." Instead, the defendant must establish some close substantial connection with the state approaching the relationship between the state and its own residents.<sup>8</sup> It was upon such

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Contrary to this court's conclusion on rehearing that Texas has an interest in adjudicating this case because the plaintiffs are United States citizens, cases demonstrate that state interest in litigation is consistently derived from a state's desire to protect its own citizens and property and to effectuate its own regulatory policies. *See, e.g.*, *Blount v. Peerless Chemicals, Inc.*, 316 F.2d 695, 697 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963); *Compania de Astral v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). *See also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1343, 1345 (1980).

<sup>8</sup> This relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principal place of business for the defendant. *See Seymour v. Parke, Davis & Co.*, *supra* at 587: "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have no question of the right of the state to subject the defendant to suit for unconnected causes of action." *See also* Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960 (1981); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35, comment e (1971): "The individual's activities in the State may . . . be so continuous and substantial as to justify the exercise of judicial jurisdiction over him as to causes of action arising from activities in other states. This is particularly likely to be true in a situation where the individual's principal place of business is in the State."

exception to the rule—the defendant's operating its corporate headquarters in the forum state—that the United States Supreme Court upheld the exercise of jurisdiction over an unrelated cause of action in *Perkins v. Benguet Consolidated Mining Co.*, *supra*.<sup>9</sup>

The court in this case has applied the "minimum contacts" standard. The error in this reasoning is that the nexus requirement is satisfied and becomes unnecessary, not upon a showing of "minimum contacts," but upon a demonstration of the defendant's *substantial* and *continuous* activity in the forum. Absent a showing of such activity, the nexus requirement becomes a highly significant factor. Texas should not assume jurisdiction over this case that involves nonresident plaintiffs and a nonresident defendant when the cause of action arises out of facts totally unrelated to the forum state.

A separate concurring opinion filed on rehearing contends that the "long arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due process than United States citizens, *cf. Plyler v. Doe*, 50 U.S.L.W. 4650 (1982); *Truax v. Raich*, 239 U.S. 33 (1915), it is nevertheless inconsistent with the way due process has been applied in previous cases. Although such a contention is rarely raised, cases dealing with jurisdictional issues invariably apply the same due process standards to citizens and noncitizens alike. *See, e.g., Jim Fox Enterprises v. Air France*, 664 F.2d

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<sup>9</sup> See *Seymour v. Parke, Davis & Co.*, *supra* at 587 (limiting *Perkins* to its facts); *Newton, Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980) ("The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.")

63 (5th Cir. 1981); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978); *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974); *Bryant v. Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439 (1965). See also A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW vol. II at 22 (1973) (neither party's citizenship affects an American court's jurisdiction).

The court has established Texas as a "magnet" forum, drawing to its courts the trial of any lawsuit involving a defendant who has ever made purchases in Texas.

I would affirm the court of civil appeals.

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JACK POPE  
Justice

Chief Justice Greenhill and Justice Barrow join in this dissent.

OPINION DELIVERED:  
October 6, 1982

## IN THE SUPREME COURT OF TEXAS

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No. C-243

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ELIZABETH HALL, *et al.*,*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

(“HELICOL”),

*Respondent.*

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FROM HARRIS COUNTY, FIRST DISTRICT

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Elizabeth Hall, along with other survivors of four Americans who were killed in a helicopter crash in the Amazon jungles of Peru, sued Helicopteros Nacionales de Colombia, S.A. Plaintiffs will hereafter be called Hall and the defendant will be called Helicol. Helicol is a corporation organized and existing under the laws of Colombia, with its principal place of business in Bogota, Colombia. Defendant Helicol, by special appearance, challenged the jurisdiction of the courts of Texas over Hall's action. TEX. R. CIV. PRO. 120a. The trial court overruled Helicol's challenge to the court's jurisdiction and, upon trial, granted judgment on a jury verdict finding that Helicol was negligent. The only points that have been preserved for this appeal are those that challenge the jurisdiction of the Texas courts. The court of civil appeals reversed the judgment of the trial court and ordered the case dismissed for lack of jurisdiction. 616 S.W.2d 247. We affirm the judgment of the court of civil appeals.

In 1974, Petro Peru, the Peruvian state owned oil company made a contract with Consorcio, a joint venture, to construct a pipeline from the jungles of Peru to the Pacific Ocean. The joint venturers were Williams International Sundamericana, Ltd., a Delaware Corporation with headquarters in Tulsa, Oklahoma; Sedco Construction Corporation, a Texas corporation; and

Horn International, Inc., a Texas corporation. The joint venture was organized for the sole purpose of performing the contract in Peru. We shall refer to the joint venture as Williams-Sedco-Horn, or as Consorcio, the term used in the Peruvian contract.

The defendant, Helicol, was not a party to that basic contract, but it had a contract with Consorcio to provide helicopter service for the workers and supplies that had to be transported to regions where there were no roads. The president of Williams, the Oklahoma member of the joint venture, had prior experience with Helicol while building pipelines in Ecuador and Peru. He called Helicol's general manager to come to Tulsa, Oklahoma, to discuss Helicol's capacity to provide the necessary equipment. Helicol's officer and the president of Williams then flew to Houston where the management committee for Williams-Sedco-Horn agreed upon the kind of equipment that was needed.

Helicol was able to supply all of the needed equipment and pilots, except for one larger helicopter that was capable of lifting heavier loads. That additional helicopter was leased by Helicol from Rocky Mountain Helicopter out of Provo, Utah.

Helicol and the joint venture consummated and signed their contract on November 11, 1974. Under the Peruvian law, the contract had to be approved by the Peruvian Air Force. The contract was prepared on official government stationery, was in the Spanish language, and was executed in Peru by Peruvian citizens who were authorized to act for each party. A Peruvian resident signed for Williams-Sedco-Horn and Helicol's Peruvian lawyer signed for that firm. The contract stated that the joint venture would be known as Consorcio and that its legal residence would be Lima, Peru. The contract provided:

The parties, in common agreement, indicated as residence for all related to the present contract, the City of Lima and submit to the jurisdiction of the Judges and courts of Lima, Peru.

Permits to bring equipment and pilots into Peru depended upon the prior Peruvian contract. The Peruvian Air Force

made the arrangements for the permits. Consorcio, the joint venture, agreed in the contract to make its payments to Helicol's account in the Bank of America, 41 Broad Street, New York. Payments were to be made and were actually made within thirty days upon invoices from Helicol to Consorcio sent to Consorcio's offices in Lima. Helicol agreed that payments for its lease of the Rocky Mountain Helicopter would be made by the joint venture's sending to Rocky Mountain a check for ninety percent and to Helicol a check for ten percent of the invoice amount for use of the craft. Under this arrangement, the joint venture sent checks drawn on a Houston bank to Helicol either in New York or Panama City, Panama, in the approximate sum of four million dollars. The joint venture sent an additional one million dollars to Rocky Mountain on the account of Helicol as payment for the lease. No payments were made to Helicol at any Texas bank. *See generally Products Promotion, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Those who died in the crash in 1976 were residents of Oklahoma, Illinois, Arizona and Colombia. They were not residents of Texas. They had been employed by the Houston, Texas, office of Williams-Sedco-Horn. The workers were not, of course, parties to the Helicol contract or the construction contract, both of which were Peruvian based. Helicol is not a resident of Texas. Its principal place of business is in Bogota, Colombia. Its business is that of providing helicopter service to international oil and construction companies. It has no designated agent for service of process in Texas, is not authorized to do business in Texas, owns no real or personal property in Texas, has no records, office, representative, or personnel in Texas, or in the United States, has no bank accounts in Texas, is not listed in any Texas telephone directories, and has never operated into or from Texas. It performs no helicopter operations and does not recruit employees in Texas. Ninety-four percent of Helicol's stock is owned by Avianca, the national airline of Colombia.

The contacts upon which plaintiff Hall relies to give Helicol a presence in Texas for service of process are that Helicol's

officer came to Texas to discuss its capacity to supply the helicopter service. Helicol over a period of six years purchased most of its equipment and supplies from Bell Helicopter in Fort Worth to the extent of six million dollars. The joint venture paid from its Houston bank some five million dollars. Helicol by its contract with Consorcio agreed to carry insurance measured in United States dollars, and Helicol's pilots and personnel received training in Texas. Notwithstanding this activity, however, we believe that Helicol's contacts with Texas were not sufficient to justify the exercise of jurisdiction.

A determination whether the exercise of jurisdiction over a nonresident defendant is proper normally involves a two-step inquiry: (1) whether statutory authority exists for the exercise of "long-arm" jurisdiction, and (2) whether the jurisdiction, if authorized, is consistent with the requirements of due process of law under the United States Constitution. In Texas, the primary statutory vehicle for exercising "long-arm" jurisdiction is article 2031b, TEX. REV. CIV. STAT. ANN., which provides:

Sec. 3. Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or non-resident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

#### Doing business in state; definition

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any

foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State.

There has been some confusion concerning the scope of article 2031b. In the present case, the court of civil appeals stated: "In order to maintain jurisdiction over Helicol, it must be shown that it either committed a tort in Texas or entered into a contract to be performed in whole or in part in Texas." 616 S.W.2d at 250. Defining the scope of article 2031b in this manner, however, improperly restricts the definition of "doing business." Article 2031b specifies "making a contract" and "committing a tort," but does so "without including other acts that may constitute doing business. . . ." The catchall language expressed in this definition has been used to expand the scope of article 2031b to the full extent permitted by the Constitution, authorizing the exercise of jurisdiction over a nonresident defendant whenever doing so is consistent with due process. See *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977); *Hoppenfeld v. Crook*, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.); Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long Arm" Jurisdiction Statute; and The Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 307-08 (1964). Construing the statute in this manner allows courts to avoid engaging in "technical and abstruse attempts to consistently define 'doing business,'" *U-Anchor Advertising v. Burt, supra*, and shifts the focus of the inquiry to the more important question whether the exercise of jurisdiction comports with the requirements of due process. Thode, *supra* at 307.

Focusing our attention upon due process as applied in the instant case leads us to conclude that the assertion of Texas

jurisdiction over Helicol, a foreign corporation and nonresident defendant, was not consistent with due process. As stated by the United States Supreme Court, the due process clause operates as a limitation upon the power of states to adjudicate disputes affecting the rights of nonresident defendants. *Kulko v. Superior Court*, 436 U.S. 84, 91, 98 S. Ct. 1690, 56 L. Ed. 132 (1978). Admittedly, the rules affecting jurisdiction over nonresidents have been extended far beyond the territorial notions established in *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1878). In a significant line of cases beginning with *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), the United States Supreme Court expanded the power of states to reach beyond state boundaries in the adjudication of disputes. The general rule in such cases is the reasonableness or fairness of forcing the defendant to defend the suit in a distant forum. As stated by the Court in *International Shoe, supra* at 316:

[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice.

In *O'Brien v. Lanpar Co.*, 399 S.W.2d 340, 342 (Tex. 1966), this court construed an Illinois statute to determine whether an Illinois judgment against a defaulting Texas defendant was valid and entitled to full faith and credit. The question was whether the Illinois court had *in personam* jurisdiction over the Texas resident, and we held that it did. We quoted with approval from the decision in *Tyee Construction Co. v. Dulien Steel Products, Inc.*, 62 Wash. 2d 106, 381 P.2d 245, 251 (1963), in its statement of three basic factors that should coincide if jurisdiction over a nonresident corporation is to be constitutionally entertained:

(1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the

assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

The second prong of the *O'Brien* test, that the cause of action must arise out of the contacts with the forum state, has been the topic of some controversy since the test was first adopted. Some courts and commentators see the requirement as an overly restrictive construction of the due process clause. *See, e.g., Docutel Corp. v. S.A. Matra*, 464 F. Supp. 1209, 1219 (N.D. Tex. 1979); *Comment, The Texas Long-arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 760 (1976). *Contra: see Thode, supra* at 303 n.149. The United States Fifth Circuit has been particularly inclined to find jurisdiction established by a defendant's contacts that are unrelated to the plaintiff's cause of action. *See Jetco Electronic Industries v. Gardiner*, 473 F.2d 1228 (5th Cir. 1973); *Eyerly Aircraft Co. v. Killian*, 414 F.2d 591 (5th Cir. 1969).

We recognize that a nexus between the cause of action and the defendant's contacts with the forum state is not a rigid due process requirement. It is, however, a significant factor to be considered when evaluating the fairness of the exercise of jurisdiction in a given case. A cause of action asserted against a nonresident defendant that does not arise out of something done in the forum state compels proof of more pervasive contacts with the forum than a cause of action that is connected with the defendant's activities in the state. *Cornelison v. Chaney*, 16 Cal. 3d 143, 127 Cal. Rptr. 352, 545 P.2d 264, 266 (1976). *See also Vencedor Manufacturing Co., Inc. v. Gougle Industries, Inc.*, 557 F.2d 886, 889 (1st Cir. 1977). As the relationship between the cause of action and the defendant's purposeful activity in the state grows more tenuous, the plaintiff faces an ever-increasing burden of showing contacts with the forum sufficient to justify the exercise of jurisdiction.

In the present case, the only connection between the asserted cause of action based upon the crash in Peru and Helicol's activity in Texas is a few hours of negotiation with Williams-Sedco-Horn in Houston. These discussions were attended by Helicol's general manager and concerned the business venture that provided the eventual setting for the accident in Peru. No evidence has been presented, however, indicating that the negotiations in any way dealt with the deceased workers or any matters leading or contributing to the helicopter crash in Peru. As such, a connection between the cause of action based upon the South American disaster and Helicol's activities in Texas is remote and at best coincidental. Likewise, there is no evidence of a connection between the cause of action and Helicol's dealings with Bell Helicopter in Fort Worth. A lawsuit based upon the use of a defective helicopter purchased from Bell might have indicated such a connection. In the present case, however, Hall and the other plaintiffs offered evidence of Helicol's negligence due to *pilot error*. There was no showing that the negligence extended beyond the events immediately surrounding the accident.

A contention has also been made that the cause of action was connected to Helicol's local activities because the contract between Helicol and Williams-Sedco-Horn obligated Helicol to acquire liability insurance payable in American dollars to cover any claim arising out of performance of the contract, and thereby created a third party beneficiary contract in favor of the deceased workers. We do not see, however, how this fact creates a link between the crash and Helicol's activities in Texas sufficient to justify the exercise of jurisdiction. There has been no allegation or proof that insurance was ever discussed during negotiations in Texas. The contract containing the clause was not signed in Texas. The liability coverage was provided by a foreign insurer, a corporation named Compania Sebulas. The "beneficiaries" of the contract were not Texas residents. The fact of insurance coverage is therefore not relevant to the present inquiry.

It has been stated that a nonresident may establish a "general presence" in a state, and may thereby subject himself to that state's jurisdiction even for *unrelated* causes of action asserted against him, when his contacts with the state may be described as "substantial, continuous, and systematic." *See Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445-48, 72 S. Ct. 413, 96 L. Ed. 485 (1952). *Perkins* illustrates the type of activity that has been held sufficient to justify the exercise of jurisdiction based upon *unrelated* contacts with the forum. In *Perkins*, the corporate defendant carried out extensive business activities in the forum state, including banking, correspondence, maintenance of official records, holding of directors' meetings, and payment of employee salaries. These activities were so substantial that the forum became the temporary headquarters of the corporation. The exercise of jurisdiction under such circumstances was thus justified by the fact that the corporate defendant became, in effect, a resident of the forum. As one commentator has observed, "The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose." Newton, *Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980).

In the instant case, Helicol in no way engaged in the "substantial, continuous, and systematic" activity necessary to establish a general business presence in Texas consistent with the holding of *Perkins v. Benguet Mining Co.*, *supra*. Helicol directed all of its business activities from its offices in South America. There is no evidence that it ever performed or sought to perform any transportation business in this state. While it did purchase expensive equipment from a Texas business, it did so only for use outside the state.

The central concern in all jurisdictional disputes is the relationship between the defendant, the forum, and the litigation. *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977). Of these, a connection between the forum and the litigation is no less important than contacts between the forum and the defendant. The former relationship is typically estab-

lished by showing the forum's "interest" in the lawsuit. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *Kulko v. Superior Court*, *supra* at 92; *Shaffer v. Heitner*, *supra* at 222 (Brennan, J., dissenting) ("I believe that our cases fairly establish that the State's valid substantive interests are important considerations in assessing whether it constitutionally may claim jurisdiction over a given cause of action."). Thus, where any of the parties to a lawsuit are residents of the forum state, jurisdiction is supported by that state's interest in protecting its citizens, *Hess v. Pawloski*, 274 U.S. 352, 356, 47 S. Ct. 632, 71 L. Ed. 1091 (1927), and in providing those citizens with a means of obtaining restitution for wrongdoing. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957). Likewise, a state has an interest in providing a procedure for peaceful resolution of disputes that arise in whole or in part within that state's territory or that affect property located within the state's boundaries. *Shaffer v. Heitner*, *supra* at 208. Jurisdiction in the forum state could also be supported in such cases by the likelihood that important records and witnesses would be located there, *McGee*, *supra* at 224; *Shaffer v. Heitner*, *supra* at 208, and the probability that the law of that state would apply to the cause of action. See *Traynor, Is This Conflict Really Necessary?*, 37 TEXAS L. REV. 657, 664 (1959).

The present case reveals no relationship between Texas and the suit being asserted against Helicol. None of the plaintiffs in this suit are Texas residents, nor were any of the deceased workers. All of the events relevant to the cause of action occurred in South America. The accident was extensively investigated by South American officials. Most, if not all, of the evidence and witnesses are located there. We find no cases in which the exercise of jurisdiction has been upheld on the basis of such a negligible relationship between the forum and the lawsuit.<sup>1</sup> The absence of such a relationship in this case, com-

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<sup>1</sup> With one exception, all of the recent decisions of the United States Supreme Court in which exercises of *in personam* jurisdiction

bined with the insufficiency of related contacts between Helicel and Texas, leads us to conclude that the exercise of jurisdiction by the trial court was inconsistent with constitutional limitations on state power. Any other rule could permit the establishment of jurisdiction almost anywhere in the world.

We recognize that the exercise of jurisdiction over nonresident defendants, as defined and confined by the due process clause, has undergone considerable liberalization and expansion during modern times. Notwithstanding this expansion, however, the recent case of *World-Wide Volkswagen v. Woodson*, *supra*, reflects the view of the United States Supreme Court that this enlargement of the power of the states to reach beyond their boundaries is not without limitations. The Court noted in *World-Wide*:

As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, 95 U.S. 714, to the flexible standard of *International Shoe Co. v.*

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have been upheld have *at least* involved a cause of action that arose in the forum state or a plaintiff who was a state resident. *See, e.g.*, *International Shoe Co. v. Washington*, *supra*; *McGee v. International Life Insurance Co.*, *supra*; *Traveler's Health Ass'n v. Virginia*, 339 U.S. 643, 70 S. Ct. 927, 94 L. Ed. 1154 (1950). The exception is *Perkins v. Benguet Mining Co.*, *supra*, in which the exercise of jurisdiction was justified by "substantial, continuous, and systematic" contacts with the forum, as noted previously.

Even Justice Brennan, who dissented from the Court's denial of jurisdiction in *World-Wide Volkswagen v. Woodson*, *supra*, conceded that he might have reached a different conclusion in that case had the cause of action not arisen in the forum state. *See World-Wide, supra* at 312 n. 20.

*Washington*, 326 U.S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states.

*World-Wide Volkswagen v. Woodson*, *supra* at 294 [quoting *Hanson v. Denkla*, 357 U.S. 235, 250-51, 78 S. Ct. 1228, 2 L.Ed. 2d 1283 (1958)]. We believe that the assertion of jurisdiction over Helicol in the present case exceeded the limits of due process. We therefore affirm the judgment of the court of civil appeals.

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JACK POPE  
Justice

Dissenting Opinion by Justice Wallace in which Justices Spears and Ray join.

OPINION DELIVERED:  
February 24, 1982

IN THE SUPREME COURT OF TEXAS

—  
No. C-243  
—

ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

(“HELICOL”),

*Respondent.*

—  
FROM HARRIS COUNTY, FIRST DISTRICT  
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DISSENTING OPINION

I respectfully dissent.

In their briefs before this Court both parties agreed that our opinion in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), controls the disposition of this case.

In *U-Anchor*, we stated:

Article 2031b provides that a non-resident entering into a contract with a Texas resident performable in part by either party in Texas shall be deemed to be doing business in Texas . . . We agree that in this respect, as well as with respect to 'other acts that may constitute doing business,' Article 2031b reaches as far as the federal constitutional requirements of due process will permit. We let stand the statement in *Hoppenfeld v. Crook*, 498 S.W.2d 52 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 'that the reach of Art. 2031b is limited only by the United States Constitution.' . . . Furthermore, such a construction is desirable in that it allows the courts to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.'

In the *U-Anchor* opinion we specifically adopted the above language from *Hoppenfeld*. Also in *U-Anchor* this Court

approved the three-prong test set out in *O'Brien v. Lanpar Company*, 399 S.W.2d 340 (Tex. 1966). That three-prong test is: (1) the non-resident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

I will discuss the three elements necessary for jurisdiction in connection with the facts as set out in the majority opinion, adding some facts omitted in the majority opinion.

## I.

It is undisputed that Helicol committed the following acts in Texas:

- a. Purchased substantially all of its helicopter fleet in Fort Worth, Texas;
- b. Did approximately \$4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of \$50,000 per month with Bell Helicopter Company, a Texas resident;
- c. Negotiated in Houston, Harris County, Texas, with a Texas resident which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action;
- d. Sent pilots to Fort Worth, Texas, to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia;
- e. Sent maintenance personnel and pilots to Texas to be trained;
- f. Had employees in Texas on a year-round basis;

- g. Received roughly \$5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and
- h. Directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question.

I do not understand how it could be questioned that the above acts constituted the doing of a purposeful act or the consummation of some transaction in Texas sufficient to satisfy the first *U-Anchor* test.

## II.

Helicol sent its general manager to the State of Texas where he negotiated a contract with a Texas resident to provide helicopter service. A provision of that contract required liability insurance payable in American dollars to cover a claim such as this one which arose directly from the performance of the contract. The three deceased individuals were thus third-party beneficiaries under the provisions of the contract requiring liability insurance to cover them while they were being transported by Helicol. In my opinion the requirement that the cause of action must arise from *or be connected* with a purposeful act or transaction is thus met. The claims of the three deceased workmen are thus connected with the act of Helicol in negotiating a contract wherein the deceased were third-party beneficiaries. There is authority for holding that the negotiation of a contract in Texas prior to its execution is sufficient to satisfy jurisdictional due process requirements. *Wright Waterproofing Co. v. Applied Polymers of America*, 602 S.W.2d 67, 71 (Tex. Civ. App.—Dallas) *writ ref'd n.r.e. per curiam*, 608 S.W.2d 164 (Tex. 1980) and *Michigan General Corp. v. Mod-U-Kraf Homes, Inc.*, 582 S.W. 2d 594, 596 (Tex. Civ. App.—Dallas 1979, *writ ref'd n.r.e.*). Further, it is not unreasonable to require a corporation which has purchased millions of dollars worth of goods in Texas to defend a suit in Texas. The corporation has significantly entered the business life of Texas. *Docutel v. S.A. Matra*, 464 F.Supp. 1209 (N.D. Tex. 1979).

## III.

I would hold that the assumption of jurisdiction by Texas does not offend traditional notions of fair play and substantial justice, consideration being given to the nature and extent of the activity in Texas, the relative convenience of the parties, the benefits and protection of Texas afforded the respective parties, and the basic equities of the situation. The above recited activities by Helicol are a sufficient basis for holding that Helicol could reasonably be expected to defend an action in Texas which was connected with the acts committed by it in this State. It certainly would be no more inconvenient for Helicol to defend a lawsuit in Texas than it was for it to carry on a regular and substantial transaction of purchasing equipment, spare parts and services; have its personnel trained in Texas and have its corporate executives make regular trips to Texas. The general manager of Helicol testified that at least thirty-three trips had been made by executives of Helicol to Texas in the four to five years prior to the accident in question. The three deceased workmen were hired in Texas by a Texas citizen and were entitled to the benefits and protection of the Texas courts.

I would hold that the majority's reliance on *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) is unfounded. The holding in *World-Wide* was based upon the finding that the automobile dealer and distributor in the State of New York had absolutely no contacts, ties or relations with the State of Oklahoma, and thus there was no jurisdiction. In contrast, Helicol has a long history of substantial contacts, ties and relations with the State of Texas. As we stated in *U-Anchor*, our long-arm statute, Article 2031b, reaches as far as the federal constitution requirements of due process will permit. The construction of our long-arm statute should focus on the constitutional limitations of due process. Those limitations are that our exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. I would hold that fair play and substantial justice are best served by providing a forum for the depen-

dents of the three deceased workmen who were hired in Texas, by a citizen of the State of Texas, to fulfill a contract negotiated in Texas, against Helicol who has a long history of substantial contacts and transactions within the State of Texas.

I would reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

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JAMES P. WALLACE

Justices Spears and Ray join in this dissent.

OPINION DELIVERED: February 24, 1982

COURT OF CIVIL APPEALS OF TEXAS, HOUSTON (1st Dist.)

No. 17882

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL"),

*Appellant,*

v.

ELIZABETH HALL, *et al.*,

*Appellees.*

**Appeal From The District Court Of Harris County**

This is an appeal from a money judgment awarded to appellees in a wrongful death action arising out of a helicopter crash in Peru, South America. Specifically, Helicopteros Nacionales De Colombia, S.A. (Helicol) is appealing from an order overruling its special appearance pursuant to Rule 120a, T.R.C.P.

We reverse and order the case dismissed.

Helicol, South American, corporation with its residence in Colombia, was sued by the appellees, survivors of four men killed in a helicopter accident which occurred in the jungles of Peru in January, 1976. Service was had upon Helicol under the "long-arm" statute, Tex. Rev. Civ. Stat. Ann., art. 2031b.

Although the actions by the survivors of the four men were filed separately, the four cases ultimately were consolidated for all purposes. Prior to consolidation, however, the special appearance pursuant to Rule 120a was timely filed in each of the causes. Pursuant to an agreement between counsel for Helicol and counsel for appellees, a special appearance hearing was conducted with testimony presented and evidence admitted in only one of the cases. It was agreed by the attorneys for all the parties that the testimony and evidence presented during that special appearance hearing would be filed and used as the testimony and the evidence presented by the parties in

each of those cases. The courts in all four cases honored those agreements and after considering the testimony and the evidence, overruled the special appearances filed by Helicol. The transcribed testimony and attached exhibits which have been filed with this court on appeal are the same transcribed testimony and exhibits considered by the trial court in all four cases. A motion for reconsideration of the overruling of Helicol's special appearance was filed and also overruled. The case proceeded to a jury trial on the merits. A verdict was returned against Helicol and appellees were jointly awarded \$1,141,200, together with post-judgment interest.

We are not here concerned with the record in this case as it relates to the verdict and judgment. Our sole concern is whether or not the evidence adduced at the special appearance hearing supports the overruling of Helicol's special appearance.

The appellant asserts two points of error, the first of which avers that the court erred in overruling the special appearance of Helicol because Helicol, a South American corporation, was not doing business in Texas and did not otherwise engage in acts which come within the purview of art. 2031b. By point of error two, Helicol complains that the trial court erred in overruling the Rule 120a special appearance of Helicol because Helicol, a foreign corporation, did not have sufficient contacts with Texas to meet the requirements of the constitutional minimum contacts test so that the exercise of *in personam* jurisdiction over Helicol offended the traditional notions of fair play and substantial justice as set out by the Fourteenth Amendment of the U.S. Constitution.

Pursuant to Rule 120a, a defendant may file a special appearance and if such appearance is overruled, the defendant may then enter a general appearance. By entering the general appearance, the defendant does not waive the right to appeal the denial of its special appearance. Rule 120a, T.R.C.P.

Originally, appellees attempted to serve Helicol by serving a sister subsidiary of Helicol, Avianca, Inc., a New York

corporation authorized to do business in Texas. It was undisputed that while both subsidiaries are owned by Aerovias Nacionales De Colombia, S.A., that they have no mutual business connections. In *Gentry v. Credit Plan Corporation of Houston*, 528 S.W.2d 571 (Tex. 1975), the court held that a subsidiary will not be responsible for the acts of a parent except "where the management and operations are assimilated to the extent that the subsidiary is simply a name or conduit through which the parent conducts its business." The evidence in the case shows Helicol is not a part of Avianca, Inc. and therefore jurisdiction cannot be maintained over Helicol by serving Avianca, Inc.

Appellees next sought to maintain jurisdiction over Helicol pursuant to art. 2031b. Article 2031b provides in pertinent part:

Sec. 3. Any foreign corporation . . . that engages in business in this State . . . and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to appointment by such foreign corporations . . . of the Secretary of State of Texas as an agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation . . . is a party or is to be made a party.

Sec. 4. For the purposes of this Act, and without including other acts that may constitute doing business, any foreign corporation, . . . shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located inside or outside Texas shall be deemed doing business in this State.

In order to maintain jurisdiction over Helicol, it must be shown that it either committed a tort in Texas or entered into a

contract to be performed in whole or in part in Texas. The undisputed evidence shows that the helicopter crash occurred in the jungles of Peru. Clearly, Helicol did not commit a tort in whole or in part in Texas, and thus the tort requirements of art. 2031b are not met. The record is in dispute as to whether Helicol entered into a contract to be performed in whole or in part by either party in Texas.

The facts in this case show that a joint venture known as Williams-Sedco-Horn (WSH) contracted with Helicol to furnish helicopter transportation service in connection with the construction of a pipeline in Peru. WSH employed the four men who died in the helicopter crash. There was never a contract between Helicol and appellees and Helicol's services were to be provided only in Peru.

A dispute arises in the evidence as to whether the contract between WSH and appellants was negotiated in Texas, Oklahoma or Peru. Helicol introduced testimony to show the contract was negotiated in Oklahoma; the parties discussed the amount and size of equipment in Houston, Texas, and that it was finalized, written and executed in Spanish in Peru. Helicol also showed that the contract required final approval from the Peruvian government. Payment for Helicol's services was invoiced in Peru and then American dollars were to be deposited in bank accounts in Panama and New York City. It is undisputed that the money came from a Texas bank where WSH had an account. Helicol did not have any bank accounts in Texas. The following testimony was offered by Mr. Restrepo, called by Helicol:

A: The contract that was entered into by Helicol with Williams-Sedco-Horn for the transportation that was involved in this accident, was that contract negotiated or signed in the United States?

A: No, sir.

Q: Where was it signed, sir?

A: Lima.

Q: That's Lima, Peru?

A: Yes.

Q: Where was this signed and executed?

A: In Lima, Peru.

Q: This contract, Mr. Restrepo, why was it executed for Helicol by a lawyer in Peru, can you tell the Court that?

A: Because it has to be done according to the Peruvian laws.

Q: The contract had to be executed in accordance with Peruvian laws, is that what you said?

A: Yes.

Q: Which Peruvian governmental agency handled the contractual negotiations?

A: The Peruvian Air Force.

Q: Did they participate in the writing of the contract?

A: Yes, they have to approve the contract.

Q: So the contract even had to be printed on official papers of Peru?

A: Yes, sir.

Q: Just to make it perfectly clear, Mr. Restrepo, this contract was not executed in the United States, is that right, sir?

A: No.

Q: He (Novak) testified in his deposition that you made the deal down here in Houston, that is where you entered into the agreement for Helicol to provide the helicopter services, is that right?

A: They called me to discuss the amount and the size of the helicopter, but the deal was already done, like I said, in Peru.

Further, the entire discussion of the jurisdiction question seems to be answered by paragraph 19 of the contract, which states that all parties agree that Lima, Peru, is the residence for all related to the contract and that the parties submitted to the jurisdiction of Peru.

Appellees contend that the contract was to be performed in part in Texas because of a provision therein, "that payment must be paid by the main office . . ." of WSH. However, even if WSH's main office were in Houston, the contract directed that the payments be made to Helicol's accounts in New York or Panama City. Nor can we determine that the place of payment in the contract had any significant bearing on the parties' contractual relations. What difference could it have made with either party if the payments were made from Texas, California or wherever so long as they were in fact made? Consider the consequences of WSH's moving its "main office" to Mexico or elsewhere in the world. Would appellees then contend that such other places would be where the contract was to be partially performed? We conclude that such provision for payment "by the main office" could only mean that WSH was free to make the payments due to Helicol from wherever it chose.

There seems to be absolute agreement by the courts, state and federal, that before a non-resident defendant can be made to answer to the jurisdiction of Texas under its "long-arm" statute, it must be shown that such defendant is susceptible to the threefold "minimum contacts" and "fair play" tests for jurisdiction as set forth in *O'Brien v. Lanpar*, 399 S.W.2d 340 (Tex. 1966) and affirmed in the recent Texas Supreme Court case of *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977):

- 1) The non-resident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- 2) The cause of action must arise from, or be connected with, such act or transaction; and
- 3) The assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the forum state afforded the respective parties, and the basic equities of the situation. *Id.* 399 S.W.2d at 342.

The evidence before us fails to show that any of the foregoing requirements was met so as to give Texas jurisdiction of appellees' causes of action.

In a very similar fact situation involving a fatal helicopter crash off the coast of Ghana, Africa, Judge Seals in *Reich v. Signal Oil and Gas Company*, 409 F. Supp. 846 (S.D.Tex.1974) aff'd mem. 530 F.2d 974 (5th Cir. 1976), gives an exhaustive analysis of the requirements and the cases involving the Texas "long-arm" statute. In *Reich*, the plaintiffs sought to establish "doing business" in Texas by showing that the helicopter in question was manufactured in Italy by Agusta and leased to defendant Bristow, a British corporation, pursuant to a licensing agreement with Agusta. The helicopter was manufactured by Agusta according to a design owned by Bell Helicopter Co., a corporation doing business in Texas. The helicopter was never in Texas. The plaintiffs claimed jurisdiction in Texas because Bristow had "numerous and substantial business contacts in Texas" and Agusta had entered into a licensing contract in Texas. In holding that the plaintiffs had not met their burden as required by art. 2031b, the court stated:

However, assuming arguendo that Agusta's Licensing Agreement was entered into in Texas, Plaintiffs have not alleged a contract cause of action, and this court has found no authority to support the thesis that one who is neither a party nor a third-party beneficiary to a contract may raise the contract for the purpose of establishing jurisdiction over a nonresident defendant. (citation omitted) But even if there were such a principle of law it is the opinion of this Court that under the facts of this case the Licensing Agreement would be insufficient to support a finding of jurisdiction. The mere fact of the existence of a contract possibly entered into in Texas does not provide jurisdiction in and of itself. The same basic factors of jurisdiction under the letter of the state statute and under the requirements of constitutional due process still obtain.

In the *U-Anchor* case, *supra*, the court observed that the Texas "long-arm" statute may reach only as far as the federal constitutional requirements of due process will permit and

denied the Texas court jurisdiction over Burt, a nonresident. The basis of such denial was that Burt's contacts with Texas were minimal and fortuitous and that he had not "purposefully" carried on any activities within the state.

The facts before us are even stronger relative to Helicol's contacts with Texas. Helicol has neither offices, business records, employees, property, bank accounts nor a telephone number in Texas. It does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Appellees' arguments, that "fair play" and "substantial justice" would best be served by requiring Helicol to appear before a court in Texas, are not persuasive. The persons killed in the helicopter crash were residents of Oklahoma, Illinois, Arizona and South America. None of them or their representatives had any contacts with Texas. The contract between Helicol and WHS specifically provided that all parties thereto were to be subject to the forum and laws of Peru. Clearly then, Texas has no special interest in the suit arising between parties to the contract who had already committed themselves to be bound by Peruvian law.

Appellees have failed to show that Helicol had sufficient minimum contacts with Texas as would invoke the contract, tort or fair play requirements of the Texas "long-arm" statute.

We have considered appellees' contention that Helicol's action in filing a suit against Bell Helicopter Company constituted a submission by Helicol to the jurisdiction of Texas. We do not agree that this is true. When Helicol filed its suit against Bell, Bell moved for and was granted a consolidation.

Helicol's action, being a mandatory cross-claim under art. 2212a(2)(g), Tex.Rev.Civ.Stat.Ann., was required to be filed in the primary suit or lost. Helicol's right to relief against Bell had already been established when the primary suit was filed.

The judgments of the trial courts in overruling Helicol's special appearance are reversed; judgment is rendered granting Helicol's Rule 120a special appearance; and this case is ordered dismissed for lack of jurisdiction.

/s/ Henry E. Doyle  
HENRY E. DOYLE  
Associate Justice

Associate Justices Warren and Evans also sitting.

Judgment rendered and opinion filed January 22, 1981.

WYATT H. HEARD  
JUDGE, 190th DISTRICT COURT  
CIVIL COURTS BUILDING  
HOUSTON, TEXAS 77002

MARCH 28, 1978

MR. GEORGE PLETCHER  
TWO HOUSTON CENTER, SUITE 2000  
HOUSTON, TEXAS 77002

MR. DANIEL O. GOFORTH  
900 CAPITAL NATIONAL BANK BUILDING  
HOUSTON, TEXAS 77002

MR. MICHAEL P. GRAHAM  
ONE SHELL PLAZA  
HOUSTON, TEXAS 77002

MR. KEN KUYKENDALL  
ONE SHELL PLAZA  
HOUSTON, TEXAS 77002

MR. L. S. CARSEY  
BANK OF THE SOUTHWEST BLDG.  
HOUSTON, TEXAS 77002

MR. JOHN P. FORNEY  
MELLIE ESPERSON BUILDING  
HOUSTON, TEXAS 77002

RE: No. I,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,  
190TH DISTRICT COURT

GENTLEMEN:

You will recall that we heard the above on February 28th and March 6th. After listening to all of the evidence, summations of

counsel and reading the briefs submitted on behalf of the respective interests, the court overrules the motion for special appearance.

Counsel will prepare the appropriate order for entry by the court.

Sincerely,

/s/ Wyatt H. Heard  
WYATT H. HEARD  
WHH: ME

THE SUPEME COURT OF TEXAS  
P.O. BOX 12248 CAPITOL STATION  
AUSTIN, TEXAS 78711

October 6, 1982

CHIEF JUSTICE  
JOE R. GREENHILL

JUSTICES

JACK POPE  
SEARS McGEE  
CHARLES W. BARROW  
ROBERT M. CAMPBELL  
FRANKLIN S. SPEARS  
C. L. RAY  
JAMES P. WALLACE  
RUBY KLESS SONDOCK

CLERK  
GARSON R. JACKSON

EXECUTIVE ASS'T  
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ADMINISTRATIVE ASS'T  
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Mr. John McCamish, Sr. and  
Mr. James Ingram, Attys  
McCamish, Ingram, Martin  
& Brown  
900 Milam Bldg.  
San Antonio, Texas 78205

RE: C-243: ELIZABETH HALL ET AL. vs. HELICOP-  
TEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL")

NO. 17,882 in the First Court of Appeals

NO. 1,087,423 in the 190th District Court, Harris County

Gentlemen:

Today, the motion for rehearing on behalf of Helicop-  
teros Nacionales was overruled.

The dissenting opinion of July 21, 1982 is withdrawn and the  
dissenting opinion by Justice Pope of this date is delivered.

Copies of the new dissenting opinion are being mailed to Justice Henry E. Doyle, First Court of Appeals, Judge, Wyatt H. Heard, 190th District Court, and Harris County District Clerk, Mr. Ray Hardy.

Very truly yours,

GARSON R. JACKSON, Clerk

/s/By Mary M. Wakefield  
MARY M. WAKEFIELD  
Chief Deputy

Encl: dissenting opinion

**TEXAS REVISED CIVIL STATUTES ANNOTATED  
ARTICLE 2031b.**

**Art. 2031b. Service of process upon foreign corporations  
and nonresidents**

**Failure to appoint agent; designation of Secretary of State as  
lawful attorney**

Section 1. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person required by any Statute of this State to designate or maintain a resident agent, or any such corporation, association, joint stock company, partnership, or non-resident natural person subject to Section 3 of this Act, has not appointed or maintained a designated agent, upon whom service of process can be made, or has one or more resident agents and two (2) unsuccessful attempts have been made on different business days to serve process upon each of its designated agents, such corporation, association, joint stock company, partnership, or non-resident natural person shall be conclusively presumed to have designated the Secretary of State of Texas as their true and lawful attorney upon whom service of process or complaint may be made.

**Engaging in business in state; service upon person in charge  
of business**

Sec. 2. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such

service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants principal place of business by registered mail, return receipt requested.

**Act of engaging in business in state as equivalent to  
appointment of Secretary of State as agent**

Sec. 3. Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or non-resident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

**Doing business in state; definition**

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State.

**Delivery of process to Secretary of State; forwarding copy**

Sec. 5. Whenever process against a foreign corporation, joint stock company, association, partnership, or non-resident

natural person is made by delivering to the Secretary of State duplicate copies of such process, the Secretary of State shall require a statement of the name and address of the home or home office of the non-resident. Upon receipt of such process, the Secretary of State shall forthwith forward to the defendant a copy of the process by registered mail, return receipt requested.

**Non-residency after accrual of cause of action; service upon  
Secretary of State**

Sec. 6. When any corporation, association, joint stock company, partnership or natural person becomes a non-resident of Texas, as that term is commonly used, after a cause of action shall arise in this State, but prior to the time the cause of action is matured by suit in a court of competent jurisdiction in this State, when such corporation, association, joint stock company, partnership or natural person is not required to appoint a service agent in this State, such corporation, association, joint stock company, partnership or natural person may be served with citation by serving a copy of the process upon the Secretary of State of Texas, who shall be conclusively presumed to be the true and lawful attorney to receive service of process; provided that the Secretary of State shall forward a copy of such service to the person in charge of such business or an officer of such company, or to such natural person by certified or registered mail, return receipt requested.

**Cumulative effect of act**

Sec. 7. Nothing herein contained shall be construed as repealing any statute in force in this State in reference to service of process, but this Act shall be cumulative of all existing statutes. Acts 1959, 56th Leg., p.85, ch. 43.

Office - Supreme Court, U.S.  
FILED  
MAY 18 1983  
ALEXANDER L. STEVENS  
CLERK

No. 82-1127

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner*,  
v.

ELIZABETH HALL, *et al.*,  
*Respondents*.

On Writ Of Certiorari To The Supreme Court Of Texas

JOINT APPENDIX

Of Counsel:

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## TABLE OF CONTENTS

	Page
1. Docket Entries	
(a) District Court of Harris County, Texas .....	1a
(b) Court of Civil Appeals, First Supreme Judicial District of Texas at Houston .....	3a
(c) Supreme Court of Texas .....	4a
2. First Amended Original Petition .....	5a
3. Special Appearance of Helicol and Motion to Quash and Dismiss .....	9a
4. Plaintiffs' Interrogatories to Defendant Helicol and Answers thereto, Nos. 1, 2, 75 .....	11a
(a) Exhibit B, Contract between Helicol and Con- sorcio .....	12a
5. Interrogatories of Williams-Sedco-Horn to Defend- ant Helicol and Answers thereto .....	18a
6. Transcript of Special Appearance Hearing .....	28a
7. Deposition on Written Interrogatories of Ben James Brown, Bell Helicopter Company, taken by Williams-Sedco-Horn .....	122a
(a) Documents attached in Answer to Interrogato- ry No. 2 .....	128a
(b) Documents attached in Answer to Interrogato- ry No. 3(d) .....	133a
(c) Document attached in Answer to Interrogatory No. 4a .....	135a
(d) Document attached in Answer to Interrogatory No. 7 .....	136a
(e) Documents attached in Answer to Interrogato- ry No. 8 .....	137a
8. Deposition of Charles James Novak .....	144a
9. Letter from Judge Wyatt Heard of the District Court Overruling the Special Appearance of Helicol	164a
10. Order of Consolidation .....	165a
11. Judgment of District Court of Harris County, Texas	166a
12. Opinion of the Court of Civil Appeals .....	175a

**Table of Contents Continued**

	Page
13. Opinion of Supreme Court of Texas on Respondents' Motion for Rehearing .....	184a
(a) Concurring Opinion .....	191a
(b) Dissenting Opinion .....	198a
14. Order Granting Writ of Certiorari .....	212a

DISTRICT COURT, HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

(Nos. 1,098,919; 1,098,920; 1,098,921 consolidated with Case No. 1,087,423 by Order of the Court on May 12, 1980)

No. 1087423

Filed: 8/6/76

ELIZABETH HALL, *et al.*,

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,

Defendants.

## DOCKET ENTRIES

Grant resetting of Motion for Hearing on Special Appearance	10/19/77
Hearing on Special Appearance and Hearing Continued until 3/6/78	2/28/78
Dictate letter overruling Motion for Special Appearance	3/28/78
Sign Order of Consolidation	5/12/80
Evidence	5/28/80
Evidence	5/29/80
Evidence; Summation; Jury Verdict	6/3/80
Motion for Judgment N.O.V. overruled; Enter Judgment	7/7/80

DISTRICT COURT, HARRIS COUNTY, TEXAS  
189TH JUDICIAL DISTRICT

No. 1098919

Filed:10/25/76

NAOMI LEWALLEN, *et al.*,

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,

Defendants.

## DOCKET ENTRIES

Defendant Helicol's Special Appearance and Plea  
to Jurisdiction of this Court is Overruled and De-  
nied

11/1/78

Order signed and entered

11/2/78

Transferred to 190th District Court

5/7/80

DISTRICT COURT, HARRIS COUNTY, TEXAS  
215TH JUDICIAL CIRCUIT

No. 1098920

Filed:10/25/76

HARVE PORTON, *et al.*,

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, *et al.*,

Defendants.

## DOCKET ENTRIES

Hearing on Special Appearance of Helicol. Trans-  
cript of hearing in 190th Court on 2/28/78. Sub-  
mitted as evidence according to Stipulation of all  
Parties. Evidence, Pleadings and Briefs con-  
sidered and Special Appearance overruled.  
Transferred to 190th District Court

11/13/78

5/7/80

DISTRICT COURT, HARRIS COUNTY, TEXAS  
 164TH JUDICIAL DISTRICT

No. 1098921

Filed:9/8/77

LOUISE C. MOORE, *et al.*

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,  
 Defendants.

## DOCKET ENTRIES

Transferred to 190th District Court

5/12/80

COURT OF CIVIL APPEALS,  
 FIRST SUPREME JUDICIAL DISTRICT  
 OF TEXAS AT HOUSTON

No. 17882

Filed:11/21/80

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Appellant,*

v.

ELIZABETH HALL, *et al.*,*Appellee.*

## DOCKET ENTRIES

Submitted on briefs and oral argument	1/8/81
Reversed and Dismissed	1/22/81
Motion for Rehearing filed by Appellee	2/17/81
Motion for Rehearing overruled	2/26/81
Motion for Writ of Error filed by Appellees	3/26/81
Writ of Error Granted by Supreme Court C-243	5/13/81

SUPREME COURT OF TEXAS  
190TH JUDICIAL DISTRICT

No. C243

Filed: 5/13/81

ELIZABETH HALL, *et al.*,*Petitioner,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A., ("HELICOL")  
*Respondent.*

## DOCKET ENTRIES

Cause submitted	6/10/81
Judgment of the Court of Civil Appeals affirmed	2/24/82
Petitioners' Motion for Rehearing	3/10/82
Judgment of the Court of Civil Appeals reversed on Motion for Rehearing	7/21/82
Respondent's Motion for Rehearing	8/15/82
Respondent's Motion for Rehearing overruled	10/6/82
Mandate Issued	10/8/82

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION  
TO THE HONORABLE JUDGE OF SAID COURT:**

Now comes ELIZABETH HALL, the widow and personal representative of the Estate of DEAN C. HALL, individually and as Next Friend of her minor child, DELBERT D. HALL, and come also LYDELL C. HALL, PAMELA HALL TOLER, JOHN H. HALL, ZELLA BROWN and RALPH A. HALL, plaintiffs in the above styled and numbered cause, still complaining of WILLIAMS-SEDCO-HORN, a joint venture, AVIANCA AIRLINES, and its wholly owned subsidiary, HELICOL, and BELL HELICOPTER COMPANY, a division of TEXTRON, INC., hereinafter called defendants, and for cause of action and by way of amended petition would respectfully show unto the Court and Jury as follows:

**I.**

Defendant, Williams-Sedco-Horn, a joint venture, has been served with citation herein. Defendants, Avianca Airlines, and its wholly owned subsidiary, Helicol, have an agent upon whom service of citation may be had at 2990 Richmond, in Houston, Harris County, Texas. Defendant, Bell Helicopter Company, a division of Textron, Inc., has an agent C T Corporation System, upon whom service of citation may be had at Republic National Bank Building, in Dallas, Dallas County, Texas.

**II.**

It has become necessary to institute these legal proceedings because of the tragic death of Dean C. Hall, the father, hus-

band and son of plaintiffs herein, whose death occurred on January 26, 1976 in the Country of Peru.

Dean C. Hall, the deceased, was in Peru as a result of an agreement with his longtime employer, Williams Brothers (Overseas Company) Ltd.

The defendant joint venturer, Williams-Sedco-Horn, had contracted with the defendant, Helicol, the wholly owned subsidiary of the defendant, Avianca Airlines, to furnish helicopter transportation services. In connection with this contract, a helicopter manufactured and marketed by the defendant, Bell Helicopter Company, a division of Textron, Inc., was placed at the disposal of defendant, Williams-Sedco-Horn, the joint venturer.

On January 26, 1976 the joint venturer, Williams-Sedco-Horn, dispatched this helicopter, a Bell Model 205-A1, to transport certain persons and equipment. Among the passengers was Dean C. Hall. As the helicopter was descending it crashed and burned. All of the occupants, including Mr. Hall, were tragically killed.

The joint venturer, Williams-Sedco-Horn, had a continuing and non-delegable legal duty to provide Dean C. Hall with a reasonably safe place to work, including reasonably safe transportation. Such duty was breached and was a proximate cause of the death of Mr. Hall. The defendants, Avianca Airlines and Williams-Sedco-Horn, are each responsible for the negligence of Helicol. Avianca Airlines is responsible because Helicol not only is a wholly owned subsidiary but is a mere instrumentality of Avianca. Williams-Sedco-Horn is responsible because it cannot delegate its responsibility to provide reasonably safe transportation and a reasonably safe place to work to any other party. Helicol is, of course, legally responsible for its own negligence through its pilot employee. The crash of the helicopter and the death of Dean C. Hall was proximately caused by the joint and several negligence of the defendants, Williams-Sedco-Horn, Avianca Airlines and Helicol, and each is jointly

and severally responsible to the plaintiffs herein for the damages occasioned thereby.

A contributing, producing cause of this helicopter crash may well have been the failure of the helicopter's left elevator. If such be determined as a fact, then the defendant, Bell Helicopter Company, a division of Textron, Inc., is accountable and liable to plaintiffs in strict tort liability for the manufacture, distribution and sale of a dangerously defective product.

### III.

This action is brought under Article 4671, et. seq. of the Revised Civil Statutes of the State of Texas, commonly known as the Wrongful Death Act and under the Survival Act. Elizabeth Hall is the surviving widow of Dean C. Hall; Lydell C. Hall, Pamela Hall Toler, John H. Hall and Delbert D. Hall are the surviving children; and Zella Brown and Ralph A. Hall are the surviving parents.

Dean C. Hall was 50 years of age at the time of his death with a life expectancy of 23.6 years, according to the United States Life Tables, 1973, Volume II, Section 5. He was earning and capable of earning \$3,000 monthly. He was in good physical condition at the time of his tragic death. He was a kind and affectionate husband, father and son to your plaintiffs. He was constantly interested in their welfare and ministered to their needs. He made contributions and rendered services of pecuniary value to his family. It would have been reasonably expected that he would have continued to aid his family and to comfort, counsel and care for them. It would have been reasonably expected that he would have continued to render services of pecuniary value to them had it not been for his untimely and tragic death. Elizabeth Hall, the widow, was 45 years of age at the time of her husband's death, with a life expectancy of 33.9 years, according to the United States Life Tables, 1973, Volume II, Section 5.

## IV.

By reason of all of the above and foregoing and on account of the death of Dean C. Hall, your plaintiffs are entitled to recover damages from the defendants, jointly and severally, in the reasonable and just sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000), to be apportioned among your plaintiffs as to the Court and Jury may seem just and proper under all of the circumstances.

WHEREFORE, Premises Considered, plaintiffs pray that defendants be cited in terms of the law to appear and answer herein, and that upon final trial of this cause they have judgment against the defendants, jointly and severally, in the reasonable and just sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000), to be apportioned among your plaintiffs as to the Court and Jury may seem just and proper; that they have interest on the judgment at the legal rate; that they recover their costs of Court in this behalf expended; and that they have such other and further relief, both general and special, legal and equitable, to which they may show themselves justly entitled, and in duty bound will ever pray.

BILBY, THOMPSON, SHOENHAIR &  
WARNOCK, P. C.  
900 Valley National Building  
Tucson, Arizona 85701

HELM, PLETCHER & HOGAN  
2800 Two Houston Center  
Houston, Texas 77002 654-4464

/s/ G. E. Pletcher  
G. E. PLETCHER  
Attorneys for Plaintiffs

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**SPECIAL APPEARANCE OF HELICOL AND MOTION TO  
QUASH AND DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES Now, Helicol, one of the Defendants in the above styled and numbered cause, and makes this special appearance pursuant to Rule 120A of the Texas Rules of Civil Procedure for the sole purpose of presenting this Motion objecting to the jurisdiction of this Court over the Defendant, Helicol. For cause Defendant presents to the Court the following:

I.

Helicol maintains that it is not a proper party to this suit as Texas Courts have no jurisdiction over its person or its property.

II.

This Motion to the jurisdiction is filed prior to a Plea of Privilege, or any other plea, pleading or motion.

III.

Helicol is not incorporated under Texas law and has never, at any relevant time, qualified to do business in Texas. Defendant is not amenable to process issued by the Courts in this state in this cause for the reason that the Defendant, Helicol, is not a resident of the State of Texas, does not maintain its domicile in the State of Texas, is not engaged in business in the State of Texas, does not maintain a place of regular business in the

State of Texas, does not have an agent or representative engaging in business in the State of Texas, and neither the Defendant nor any agent nor representative was served with citation herein. Defendant, Helicol, does not have, with regard to the cause of action alleged by the Plaintiffs, those minimum contacts with the State of Texas that will constitutionally support jurisdiction over Defendant's person in this cause.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Motion to the jurisdiction be set for hearing by this Honorable Court, that upon said hearing its Motion be sustained and that this entire proceeding be dismissed for want of jurisdiction over the person of the Defendant, Helicol.

Respectfully submitted,

SEWELL, JUNELL & RIGGS

/s/ By Daniel O. Goforth

DANIEL O. GOFORTH

701 Capital National Bank Bldg.  
Houston, Texas 77002 652-8700

Attorneys for Defendant,  
Helicol

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

PLAINTIFFS' INTERROGATORIES TO DEFENDANT  
HELICOL AND ANSWERS THERETO, DATED  
NOV. 30, 1976, NOS. 1, 2, 75.

1. Is Helicol incorporated under the laws of Colombia, or of any other country?
  1. Helicol is incorporated under the laws of Colombia.
2. If so, indicate:
  - a. The country of incorporation.
  - b. The address of its principal place of business or registered office.
2. a. Colombia  
b. Bogota, Carrera 7A, No. 16-84-A
75. Is the attached instrument (Exhibit B) a true and correct translation of Exhibit A?
  75. The translation is generally a true and correct translation of Exhibit A but there appear to be some errors in the translation.

[Exhibit B follows]

**EXHIBIT B****CONTRACT BETWEEN HELICOL  
AND CORSORCIO, DATED NOVEMBER 11, 1974.****CONTRACT**

It is recorded by the present document, the contract for Lending of Transport Services with helicopters, made by one party, Helicopteros Nacionales de Colombia "Helicol" S.A. who herein after shall be known as "HELICOL", with residence in Carrera 9a No. 16-51, Bogota, Colombia duly represented by its attorney in Peru, Dr. Gonzalo Garlando Inturralde Pervian, Voting Certificate Number 2910034 and Tax Certificate Number 058821, who named as his legal residence for purposes of this contract, Jr. Azangaro # 450, 8th floor, Lima. And, by the other party, WILLIAMS, SEDCO, HORN CONSTRUCTORS, with tax certificate number 9778713, duly represented by its attorney, Gerald J. Riga, who, herein after shall be known as CONSORCIO, with legal residence in Lima, Las Magnolias, 765, San Isidro; in accordance with the following terms and conditions:

**FIRST:** By means of this contract HELICOL agrees to supply, at the request of CONSORCIO, transportation services with a helicopter, allotted to the movement of persons and things which may be indicated in the development of their operations in any place which CONSORCIO designates in the Republic of Peru. To that purpose, It will place at the disposal of CONSORCIO, one helicopter, Bell brand, Model 205-A1, equipped with hook for outside cargo with capacity for 15 passengers, in good working condition, as well as crew and maintenance personnel necessary for the normal execution of the work requested by CONSORCIO.

**TWO:** HELICOL agrees that the execution and development of the present contract will be done with the existing requirements and other applicable regulations which may affect the completion of the obligations of this agreement, and, that the helicopter supplied by virtue of this contract, will give continuous service subject to the corresponding technical specifications.

THREE: HELICOL places at the disposal of CONSORCIO the helicopter described in the First Clause of this Contract; along with the crew, parts and spare parts necessary for its normal function. Equally, it agrees to keep this helicopter duly maintained and repaired during the existence of this contract, at its own expense.

FOUR: CONSORCIO may use the helicopter referred to in the preceding clause from 0700 to 1700 daily, in normal operating conditions. Nevertheless, it is understood that for maintenance reasons, said helicopter will remain inactive up to three (3) days per month. These periods of inactivity may accumulate up to two (2) consecutive months, without affecting the minimum monthly guaranteed for flying hours, to be paid by CONSORCIO, according to Clause Seven of this contract. In case the inactivity exceeds the previously cited period of three days, the 120 hours guaranteed monthly, referred to in clause seven, will be reduced to a rate of 5 hours for each day exceeding the three days previously mentioned, that the helicopter stopped working.

FIVE: During the existence of this contract, HELICOL agrees not to use, without prior consent from CONSORCIO the helicopter referred to in the present contract, for work or services different from those stipulated, except for the training of personnel in jobs which must be done or in test flights for maintenance. These training or maintenance flights will be at the expense of HELICOL.

SIX: CONSORCIO agrees to supply at his expense:

- a) The transportation from the city of Lima to the base of operations, for pilots, mechanics, and necessary administrative personnel related to operation, from beginning to end, during its regular work shifts and breaks. Also, the transport of parts and items necessary to the operations from Lima to the base of operations and vice-versa.
- b) The fuel, grease, and oil for the helicopter in the place of operation.

- c) The housing and food for the personnel in charge of the operation and maintenance of the helicopter, in the same conditions which they have for their administrative personnel.
- d) All medical and sanitary services for its own personnel in the place of operation, being understood that CONSORCIO does not assume responsibility for medical treatment received by personnel of HELICOL.
- e) Installations and facilities adequate to complete the work related to maintenance of the helicopter, including—hanger, water, compressed air, electric power and a place suitable for the warehousing of parts in the base of operation.
- f) The personnel necessary for the supplying of fuel and for cleaning, loading, and unloading work.
- g) Screens, baskets, and other items necessary for the transport of external cargo by helicopter.

SEVEN: The price for services, which, in accordance with this contract HELICOL will lend to CONSORCIO will be: Thirty one thousand nine hundred dollars (\$31,900.00) per month, plus one hundred eighty five dollars (\$185.00) per flying hour up to 120 hours. All the hours over 120 hours per month will be four hundred fifty dollars and 83 cents (US \$450.83) per flying hour.

The parties agree that flying time will be counted from the time the pilot starts the motor or turbine in preparation for the real flight until the moment that the same pilot begins to switch off the same after landing. The registering of flight time will be kept separately by the pilot and by a representative of the company, in hours and tenths of hours, on forms supplied by HELICOL. Times will be registered in logs kept for this purpose and for the helicopter. A duplicate of these logs will be kept each of them having to make the entries which they may record in their logs and those of the other party. Flying time noted in these logs will serve as basis for the monthly invoicing which HELICOL will make to the company.

EIGHT: The monthly invoicing will be made up from HELICOL to CONSORCIO, in American dollars, the first 10 days of each month in their offices in Lima and must be paid by the main office of CONSORCIO within thirty days following their presentation.

The cancellation of said bills will be done, sending the respective amount in the account of Helicopteros Nacionales de Colombia "HELICOL" S.A. in the Bank of America, 41 Broad Street, New York.

NINE: The CONSORCIO will accept in all cases the opinions which the pilot of HELICOL give, when such opinions refer to flight conditions of the helicopter, atmospheric conditions, loading and unloading of machinery, fuel quality, and in general, any matter which involves points of view of a technical nature related to the operations of the helicopter.

TEN: For the purpose of this contract, it is understood that HELICOL act as independent contractor. Consequently, none of their workers will be considered as agents or workers for CONSORCIO.

ELEVEN: HELICOL agrees to maintain during the existence of this contract the insurance policies which at present protect its own civil responsibilities in conformity with the terms and conditions and stipulations of such policies to those which the parties remit, whose limits are:

RESPONSIBILITIES FOR OPERATION OF AIRCRAFT	SINGLE COMBINED LIMIT FOR THE AIRCRAFT— EACH ACCIDENT
Bodily injury to third parties, passengers, and damage to property of third parties	US\$ 4,000,000.00
Medical Expenses	US\$ 5,000,000.00 for each passenger and crew

TWELVE: HELICOL assumes the responsibility for damages, loss in property, injury or death of any person or persons, including its own personnel, resulting from its operations when there may be reason, in accordance with the Laws of the Republic of Peru, whenever fault on the part of CONSORCIO may not be determined.

THIRTEEN: HELICOL is not responsible for loss or damage to any property or equipment which it may transport in its helicopter or which it may cause, whether or not it may be due to carelessness or negligence of its workers or agents; except in case of duly proven serious error.

FOURTEEN: This contract will be in force beginning from the date of arrival of the helicopter in the CONSORCIO'S base of operations, and will have a duration of twelve months as minimum time and 18 months as maximum time. After 12 months, CONSORCIO may terminate the contract, in writing, advising HELICOL 30 days in advance.

FIFTEEN: In case the helicopter is damaged or completely useless and if within the following 15 days the parties have not mutually made another arrangement in writing; the obligations of this agreement inasmuch as they refer to the destroyed or damaged helicopter, will automatically cease from the date on which said destruction or damage occurred.

SIXTEEN: The notices which are to be done in the development of the execution of the clauses of this agreement, are to be addressed to HELICOL and CONSORCIO in the Republic of Peru at the addresses given in the introduction of this contract.

SEVENTEEN: For mobilization and de-mobilization from the beginning to the end of the operation, CONSORCIO will pay HELICOL the amount corresponding to 6 flying hours for helicopter and in each sense in accordance with the rate of \$450.83 per hour established in Clause 7. Also, CONSORCIO will re-imburse HELCIO for transportation expenses which they might have incurred in Peru, related to the import and export of the helicopters, parts and items of this contract.

EIGHTEEN: It shall be understood that HELICOL and CONSORCIO may not have to fulfill the obligations stipulated in the present contract when such non-fulfillment arises from or originates as a result of "force majeure" or fortuitous case or other causes which may be outside the control of the parties and which may form said fortuitous case or force majeure.

NINETEEN: The parties, in common agreement, indicated as residence for all related to the present contract, the city of Lima and submit to the jurisdiction of the Judges and Courts of Lima, Peru. Consequently, the present contract is signed with 2 copies of the same, by the parties in Lima, the 11th of November, 1974.

HELICOPTEROS NACIONALES DE COLOMBIA S.A.  
"HELICOL"

Dr. Gonzalo Garland Iturralde

WILLIAMS SEDCO HORN CONSTRUCTORS  
Gerald J. Riga

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
164TH JUDICIAL DISTRICT

No. 1,098,921

LOUISE C. MOORE, *et al.*

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

INTERROGATORIES OF WILLIAMS-SEDCO-HORN TO  
DEFENDANT HELICOL AND ANSWERS THERETO,  
DATED MARCH 10, 1977.

TO: HELICOL, DEFENDANT HEREIN, AND ITS ATTORNEY OF RECORD, MR. DANIEL O. GOFORTH, SEWELL, JUNELL & RIGGS, 900 CAPITAL NATIONAL BANK BUILDING, HOUSTON, TEXAS 77002

1. Please state your name, address and title or position.
  1. Jorge A. Gonzalez P.  
Consultant to Management  
Helicopteros Nacionales de Colombia S.A. "Helicol"  
Carrera 7a. No. 16-84-A  
Bogota, Colombia
  2. Please identify by name and address each of the officers and directors of Helicol.
  2. Francisco Restrepo O. General Manager  
Carrera 7a. No. 16-84-A  
Bogota, Colombia
  - Jorge Mosquera Director of Maintenance  
Helicol  
Barranquilla, Colombia
  - Cap. Alberto Guingue Director of Operations  
Carrera 7a. No. 16-84-A  
Bogota, Colombia
  - Enrique Baquero G. Director of Finances  
Carrera 7a. No. 16-84-A  
Bogota, Colombia

Arturo Garcia Salazar	Member of the Board Carrera 9a. No. 80-15 Bogota, Colombia
Ramiro Ramirez	Member of the Board Carrera 35 No. 98-A-30 Bogota, Colombia
Henry Villa	Member of the Board Calle 89 No. 6-33 Bogota, Colombia
Roberto Pumarejo	Member of the Board (Alternate) Calle 42 No. 50-B-32 Barranquilla, Colombia
Alfonso Ramirez	Member of the Board (Alternate) Diagonal 109 No. 15-21 Bogota, Colombia
Carlos Pizano	Member of the Board (Alternate) Calle 77 No. 8-01 Bogota, Colombia

3. Please list each and every subsidiary of Helicol by full name, address and country of organization.

3. *Petroleum Helicopters de Colombia*

Calle 32 No. 7-04  
Bogota, Colombia

Country of Organization: Colombia

4. Please list every corporation, partnership, or other organized business entity which is owned in whole or in part by Helicol, and list the names and addresses of all officers and directors of each.

4. *Petroleum Helicopters de Colombia*

Calle 32 No. 7-04  
Bogota, Colombia

Jorge Cardenas N.	President Calle 32 No. 7-04 Bogota, Colombia
Bernardo Cardenas N.	Manager Calle 32 No. 7-04 Bogota, Colombia
Jorge Cardenas N.	Member of the Board Calle 32 No. 7-04 Bogota, Colombia
Efrain Ospina	Member of the Board Calle 34 No. 43-31 Bogota, Colombia
Rodney Mendez	Member of the Board Calle 122 No. 28-55 Bogota, Colombia
Alfonso Ramirez	Member of the Board Diagonal 109 No. 15-21 Bogota, Colombia
Mario Uracoechea M.	Member of the Board Calle 17 No. 5-21 Bogota, Colombia
Bernardo Cardenas	Member of the Board (Alternate) Calle 32 No. 7-04 Bogota, Colombia
Jardary Suarez	Member of the Board (Alternate) Carrera 16 No. 95-54 Bogota, Colombia
Alvaro Fernandez	Member of the Board (Alternate) Calle 121 No. 11A-38 Bogota, Colombia
Manuel Bermudez	Member of the Board (Alternate) Calle 119 No. 41-20 Bogota, Colombia

Manuel Martinez	Member of the Board (Alternate) Carrera 5a. No. 28-94. Bogota, Colombia
Helicopteros Nacionales S. A. "HELIECUADOR"	
	Apartado Postal No. 323 Quito, Ecuador
Federico Davalos Tamayo	Manager Apartado Postal 323 Quito, Ecuador
Julio Vela Suarez	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Arturo del Pozo	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Cor. Gustavo Izurieta	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Francisco Restrepo O.	Member of the Board Carrera 7a. No. 16-84-A Bogota, Colombia
Morales	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Ernesto Mendoza Lince	Member of the Board Carrera 5a. No. 86-40 Bogota, Colombia
Augusto del Pozo	Member of the Board (Alternate) c/o Apartado Aereo Quito, Ecuador
Manuel Cabeza de Baca	Member of the Board c/o Apartado Postal 323 Quito, Ecuador

Jorge A. Gonzalez P.	Member of the Board Carrera 7a. No. 16-84-A Bogota, Colombia
Alfredo Serrano	Member of the Board (Alternate) c/o Apartado Postal 323 Quito, Ecuador
Jorge Morales Rivas	Member of the Board (Alternate) c/o Apartado Postal 323 Quito, Ecuador

In addition, Helicol has minority share holdings in the following companies:

Sociedad Aeronautica de Medellin, Calle 52 No. 52-11 Medellin, Colombia

Corporacion de Viajes "COVIAJES" Ltda. Calle 19 No. 4-74 Bogota, Colombia

5. Does Helicol own, lease or otherwise have use of any real property in the State of Texas? If so, please state its address.

5. No.

6. Since January 1, 1970, has Helicol maintained at any time an account with any bank or other financial institution chartered or organized under the laws of the United States? If so, for each such account, please state:

- a. Name of bank or financial institution;
- b. Address of bank or financial institution;
- c. Account numbers;
- d. Type of account.

6. Yes.

- a. Bank of America.
- b. 30-40 Broad St., New York, N.Y.
- c. Checking accounts Nos. 6-31-30624, 6-31-30628, 6-31-30630.

**Revolving Fund Account: No. 6-31-30626**

7. Please identify by serial number and name of manufacturer the helicopter involved in the accident made the basis of these lawsuits. With regard to that helicopter, please state the following:

- a. Date of purchase from manufacturer;
- b. Was a purchase order issued? If so, please attach a copy to your answers to these interrogatories or identify the purchase order by number, date, description of item or items purchased and amounts.
- c. Terms of payment for helicopter.
- d. Method of payment including the name and address of each bank or financial institution, if any, that handled or participated in the transfer of funds in payment for the helicopter.
- e. Was the helicopter financed? If so, please identify by name and address each bank or financial institution that participated in whole or in part, directly or indirectly, in the financing arrangement and please state the terms of such arrangement.
- f. Please attach a copy to your answers to these interrogatories or identify and describe in detail, all written documentation, other than the purchase order mentioned above, relating to or in any way involved in the purchase of the helicopter.
- g. Please identify the address of the location where the helicopter was delivered by the manufacturer to Helicor.
- h. Please attach a copy of your answers to these interrogatories or identify and describe in detail all written correspondence and communication regarding the helicopter in question which was directed to or received from an address or location in the State of Texas.

7. S/N30-079  
**BELL HELICOPTER COMPANY**

- a. April 10, 1970.
- b. No - see copy Purchase Agreement attached.
- c. Cash upon delivery.

d. Cash upon delivery-Bank of America, New York.

e. Yes,

Bank of America, 30-40 Broad St.,  
New York -10%  
Export - Import Bank, New York 90%  
Terms: 4yrs. 5 months a 9.25% per annum  
Loan has been liquidated in full

f. Attached copies of:

1. Invoice No. HEL-3 25-70-Bell Helicopter Co.  
dated April 2, 1970, authenticated by Colombia  
Consulate.

2. Commercial invoice Bell Helicopter Co., No.  
H096-Dated 4-9-70.

3. Authenticated Bill of Sale, in Spanish.

4. Consular Invoice No. 938-Miami dated April 2/70.

g. Bell Helicopter Co., Fort Worth, Texas U.S.A.

h. None.

8. From January 1, 1970 through the date of your answers  
to these interrogatories, please identify each and every time an  
employee, agent or representative of Helicol has visited the  
State of Texas, and with regard to each please state the follow-  
ing:

a. Date;

b. Name and address of individual; and

c. Reason for visit.

8. See attached exhibit.

9. Please identify every tangible item that Helicol or any  
entity acting on its behalf has purchased, from January 1, 1970  
until the present date, which was manufactured in Texas,  
ordered from Texas or shipped from Texas. With regard to  
each item identified above, please state:

a. The entity in Texas who manufactured, received  
the order or shipped the item;

b. The amount of money paid for each such item;

c. The method of payment of each such item including the name and address of entity to which payment was directed and the name and address of the bank or financial institution if payment was made by draft or similar instrument.

9. With very few, isolated and minor exceptions all imports from Texas have been purchased from the Bell Helicopter Co., and these consist of numerous orders covering exclusively helicopter aircraft, its parts and components. See the attached exhibit which supplies the aircraft imported and the yearly value of parts and components imported. Payments were made by draft through the Bank of America, New York, N.Y.
10. Please identify by name of parties and date any and all contracts for the performance of services by Helicol for any corporation organized under the laws of any state of the United States entered into since January 1, 1970. With regard to each contract listed please attach a true and correct copy to your answers or please state the following:

- a. Term;
- b. Description of services to be performed;
- c. Names of persons signing for all parties;
- d. Amount and terms of payment including name and address of individual, partnership, corporation or other business entities to which payments are or were to be made.

10. 1. The Superior Oil Company  
February 20, 1970  
August 10, 1973
2. Colombian Gulf Oil Company  
May 15, 1971
3. Farmland International Energy Co.  
June 15, 1976  
January 15, 1976
4. Cayman Corporation of Colombia  
October 18, 1973  
January 22, 1975

5. Anchorage Helicopters Service  
January 22, 1975
6. Colombian Cities Service Corp.  
November 29, 1972
7. Rocky Mountain Helicopters Inc.  
March 11, 1976
8. Petty Geophysical Company  
February 15, 1976  
April 27, 1972
9. Geophysical Service Inc. "G.S.I".
10. Amoco Colombian Oil Company  
September 18, 1974  
November 13, 1975
11. Bolivian Oil Company  
April 30, 1976
12. Williams-Sedco-Horn  
1974 - 1975

To the best of my knowledge each of the above contracts were for work to be performed outside of the United States.

11. Please list by name and address each company or other business entity that has provided directly or indirectly general liability insurance coverage on the operations of Helicol since January 1, 1970.

11. From January 1, 1970 to May 31, 1976:

COLSEGUROS (LIDER) ..... 45%  
Calle 17 No. 9-82

BOLIVAR ..... 28%  
Carrera 10 No. 16-39

SURAMERICANA ..... 27%  
Avenida Jimenez No. 8-49-Piso 30.

From June 1, 1976 to date:

SEGUROS LA FENIX S.A. (LIDER) ..... 25%  
Carrera 7a. No. 33-33 Piso 50.

Compania Agricola de Seguros ..... 20%  
Carrera 7a. No. 35-40

La Previsora Compania de Seguros..... 15%  
Calle 58 No. 9-57

La Libertad Compania de Seguros S.A..... 15%  
Avenida Jimenez No. 7-25 Piso 30.

Seguros Tequendama S.A. ..... 15%  
Carrera 7a. No. 26-20-Pisos 30., 40y 60.

Aurora S.A. Compania de Seguros ..... 10%  
Carrera 10 No. 19-65 Piso 30.

12. With regard to the contract dated November 11, 1974 between Helicol and Williams-Sedco-Horn Constructors (Consorcio), please identify each and every company directly or indirectly supplying the insurance coverage referred to in Paragraph 11 of said contract.

12. COLSEGUROS (LIDER) ..... 45%  
Calle 17 No. 9-82

BOLIVAR ..... 28%  
Carrera 10 No. 16-39

SURAMERICANA..... 27%  
Avenida Jimenez No. 8-49-Piso 30.

TRANSCRIPT OF  
SPECIAL APPEARANCE HEARING  
HELD FEBRUARY 28, 1978

[1] CAME ON TO BE HEARD, before the Honorable Wyatt H. Heard, Judge of the 190th Judicial District Court of Harris County, Texas, on the 28th day of February, 1978, the above entitled and numbered cause for a hearing; and both plaintiff and defendant appearing in person and/or by counsel, an announcement of ready having been made, the following facts were adduced and evidence admitted, viz:

\* \* \*

[Testimony of Jorge Alberto Gonzalez]

[6] MR. GOFORTH (COUNSEL FOR HELICOL): The movant would call Jorge Alberto Gonzalez by deposition, taken on the 25th day of January, 1977, at the offices of Sewell, Junell & Riggs, before Diane S. Richer, notary public in and for Harris County, Texas, and being by me first duly sworn, testified by his oral deposition as hereinafter set out. . . .

\* \* \*

[8] Q. "Would you state your full name, please, sir?

A. Yes; Jorge Alberto Gonzales.

Q. Mr. Gonzalez, would you state your address?

A. My home address?

Q. Yes, sir.

A. Calle—C-a-l-l-e—19, No. 1231, Bogota, Colombia.

Q. You are a citizen of what country, sir?

A. Colombia.

Q. You were born in Colombia?

A. Yes, sir.

\* \* \*

[11] Q. Are you employed by Helicol?

A. Yes, sir.

Q. You are paid by Helicol?

A. Yes, sir.

Q. Does your position as consejero require you to be in contact with the officers and employees of Helicol on a day-to-day basis?

A. Yes, sir.

Q. Do you advise the officers and employees of Helicol daily?

A. I would say yes.

Q. Do your functions or job require you to be familiar with all phases of the Helicol operations?

A. I would say yes, but mostly in connection with management policy rather than with the strictly technical aspect; the operations.

Q. Are you here today by agreement of the parties that you would come to Houston and give your deposition testimony?

[12] A. Yes. I'm here because I was so instructed.

Q. By whom were you instructed?

A. Or requested to by the management of Helicol.

MR. PLETCHER [Counsel for plaintiffs]: By whom, sir?

THE WITNESS: Management of Helicol.

Q. (By Mr. Goforth) Are you in Houston or in Texas for any purpose other than to attend this deposition and give your testimony?

A. No, sir.

Q. Have you been authorized by the management of Helicol to speak for Helicol today in giving your testimony?

A. I would say yes.

Q. For purposes of explanation, tell us generally and briefly what functions and services are performed by Helicol.

A. Well, primarily Helicol was founded to operate helicopters for third parties, and the company is equipped for that purpose—and to do maintenance work for its own fleet and for aircraft of third parties, especially in connection with maintenance, overhaul, repairs, et cetera.

[13] Q. So, as I understand it, is Helicol basically in the business of providing helicopter service and maintenance and repair for interested parties?

A. Yes.

Q. When was Helicol incorporated?

A. 1955.

Q. Where was it incorporated?

A. Bogota.

Q. Who financed the incorporation of Helicol?

A. Aerovias Nacionales De Colombia—Avianca—and Keystone Helicopters of Philadelphia.

Q. Do you know what the original—

(Discussion off the record.)

Q. (By Mr. Goforth) What is the proper name of the airline that is commonly called Avianca Airlines?

A. Aerovias Nacionales De Colombia, S.A.; A-e-r-o-v-i-a-s.

Q. With your permission, Mr. Gonzalez, we will refer to in this deposition Avianca Airlines as Aerovias for purposes of distinguishing it from other companies or incorporated entities. Is that fair enough?

[14] A. That seems correct, yes.

Q. Is there yet another entity that is called Avianca, Inc.?

A. Yes.

Q. Is Avianca Inc., incorporated?

A. No, no.

Q. Is Aerovias incorporated?

A. Bogota.

Q. That's Colombia?

A. Yes, sir.

Q. So, for purposes of this deposition, if it's agreeable to you, I would like to refer to Helicol, of course, as Helicol, to the airline as Aerovias, and to the New York corporation as Avianca Inc. Is that all right with you, sir?

A. It seems very good.

Q. If you know, sir, what was the original financing arrangement for the incorporation of Helicol?

A. The original capital, I believe, was 150,000 pesos, Colombian pesos.

[15] Q. Do you know how much of that 150,000 pesos was contributed by Aerovias?

A. 77,000.

Q. And was the remainder contributed by Keystone Helicopter?

A. Correct.

Q. Is Keystone Helicopter an American company?

A. Yes, sir.

Q. Do you know where it is incorporated?

A. I don't know where it's incorporated. I know their place of business is in Philadelphia.

Q. Does Keystone Helicopter still own any of the stock in Helicol?

A. Not to my knowledge.

Q. Are any of the stockholders of Helicol at the present time United States citizens?

A. Stockholders?

Q. Yes, sir.

A. No, sir.

Q. Where is the principal place of business of Helicol?

A. Bogota.

Q. Where does it conduct business?

A. Well, of course, it varies with the times. But it conducts business in Colombia; it conducts business in Ecuador; it conducts business in Peru.

[16] Q. Can you think of any others?

A. And Brazil.

Q. Can you think of any other countries besides those four where Helicol has conducted business?

A. I think some years before I was connected with Helicol, I think, they did some work in Nicaragua; offshore work.

Q. No other countries that you can think of?

A. No.

\* \* \*

Q. Does Aerovias hold any of the stock in Helicol at the present time?

A. Yes, sir.

Q. How much of the stock is held by Aerovias?

A. Ninety-four percent.

[17] Q. Do you know who the remaining stockholders are?

A. Of Helicol?

Q. Yes, sir.

A. Yes. Aerovias Corporation De Viajes—

Q. You are probably going to have to spell that for the reporter.

A. C-o-r-p-o-r-a-c-i-o-n and then separately D-e and then separately V-i-a-j-e-s and separately L-T-D-A. Then, Mr. Sab-  
sa Pratel, S-a-b-s-a and separately P-r-a-t-e-l. Separately, now another name, Rafael—just the way it sounds—R-a-f-a-e-l,  
Barvo, B-a-r-v-o. And another one, Juan Pavlo; J-u-a-n P-a-v-  
l-o. Ortega, which is O-r-t-e-g-a, Gomez, G-o-m-e-z, and Com-  
pany, S.A.

Q. Those individuals or entities that you just named own the remaining six percent of the stock of Helicol; is that correct?

A. That is correct.

Q. Are there stockholders that are common to both Helicol and Aerovias?

A. No.

Q. Is Aerovias a publicly held company?

[18] A. Yes.

Q. Is its stock traded on a stock market in Colombia?

A. Yes.

Q. Is Helicol a publicly held company?

A. Yes.

Q. Is its stock traded on the stock market in Colombia?

A. No.

Q. We have a term in the United States which is "over the counter," and I don't know if you are familiar with that term. But, if you are, is Helicol basically traded over the counter?

A. No.

Q. Is Helicol stock offered simply when there is some offered for sale than it is open for the public to purchase that stock?

A. Will you repeat the question, please?

Q. All right. I'll try to rephrase it. If one of the owners of Helicol stock decided to sell or transfer some of this stock, would the stock simply be open for sale to the public to anybody who wanted to buy it and had the means to buy the stock?

[19] A. I would say yes.

Q. Do any of the officers of Aerovias serve as officers of Helicol?

A. No.

Q. Do any of the officers or directors of Aerovias serve as directors of Helicol?

A. Yes.

Q. Do any of the officers of Avianca Inc., serve as officers of Helicol?

A. No.

Q. Do any of the officers of Helicol serve as officers or directors of Aerovias or of Avianca Inc.?

A. Will you repeat that, please?

Q. Do any of the officers of Helicol serve as officers or directors of Aerovias or of Avianca Inc.?

A. No.

Q. To your knowledge, does Avianca Inc., hold any stock in Helicol?

A. No.

Q. Do any employees of Helicol serve as employees of Aerovias?

A. No.

Q. Do any of the employees of Helicol serve as employees of Avianca, Inc.?

[20] A. No.

Q. Do any of the employees of Aerovias serve as employees of Helicol?

A. No.

Q. Do any of the employees of Avianca Inc., serve as employees of Helicol?

A. No.

Q. To your knowledge, sir, are any of the officers or directors of Helicol located inside the United States, or do they live inside the United States?

A. Officers or directors?

Q. Yes, sir.

A. No.

Q. Are any employees of Helicol located inside the United States?

A. No.

Q. Are any of the records of Helicol kept inside the United States?

A. No, sir.

Q. Who pays the salaries of the employees of Helicol?

A. Helicol.

Q. Does Aerovias pay any of the salaries of the employees of Helicol?

[21] A. No, sir.

Q. Who pays the expenses for employees of Helicol?

A. Helicol.

Q. Does Aerovias pay any of the expenses of the employees of Helicol?

A. No.

Q. Does Avianca Inc., pay any of the salaries or expenses of the employees of Helicol?

A. No, sir.

Q. Does Helicol share offices or office space with either Aerovias or Avianca Inc.?

A. No.

Q. What functions or services, sir, are provided or rendered by Aerovias?

A. In general, you mean?

Q. Yes, sir.

A. Well, Aerovias is an airline that transports passengers and cargo domestically in Colombia—within Colombia—and passengers internationally to the United States and Europe.

Q. Does Aerovias, to your knowledge, land in Texas?

[22] A. I beg your pardon?

Q. Does it have any flights that originate or end in Texas?

A. No, sir.

Q. Does it have any flights at all that stop in Texas?

A. No, sir.

Q. Tell me, if you know, sir, what Avianca Inc., does.

A. I couldn't tell you. I'm not sufficiently familiar to tell you.

Q. Does Aerovias conduct any business on behalf of Helicol, sir?

A. No, sir.

Q. Does Aerovias recruit business on behalf of Helicol?

A. No.

Q. Does it recruit employees on behalf of Helicol?

A. No.

Q. Does Aerovias keep the books and records of Helicol?

A. No.

Q. Helicol keeps its own books and records?

A. Correct.

[23] Q. It pursues and recruits its own business and employees?

A. Yes, sir.

Q. Does Avianca recruit any business for Helicol?

A. No.

Q. Does Avianca Inc., recruit any employees for Helicol?

A. Avianca, Inc.?

Q. Yes, sir.

A. No.

Q. Has Aerovias, to your knowledge, ever loaned any money or provided any financing for Helicol?

A. No.

Q. From where does Helicol obtain necessary financing or necessary capital?

A. I would say outside of the capital that the company obtains from the sale of shares to the shareholders, all the source of financing come from banks.

Q. So, any financing for needed equipment is provided by outside banks?

A. Well, I would say for the purchase of equipment, for example, where large amounts involved, by outside banks; yes.

[24] Q. Of course, Helicol—

A. For local—might buy some equipment locally—you might get the financing from local banks.

Q. Sure. Of course, Helicol has some working capital of its own. Any time it has to buy a piece of equipment it doesn't necessarily mean it has to go to a bank to do it?

A. No, that's right.

Q. What I am asking is: if when Helicol needs additional financing, is it true that it goes to banks or some other sort of financial agency to get that capital?

A. I would say to banks.

Q. Does it or has it ever gone to Aerovias to obtain financing?

A. Not to my knowledge.

Q. Has Aerovias ever bought a helicopter for Helicol?

A. No.

Q. Has it ever bought any other form of equipment for Helicol?

A. No.

Q. Does Helicol ever provide any of its services to Aerovias?

[25] A. No, I don't think so, no.

Q. Does Aerovias ever do any of the selling for Helicol?

A. No.

Q. Helicol has its own sales force?

A. Yes.

Q. Does Avianca Inc., ever do any selling for Helicol?

A. No.

Q. Do officers or employees of Helicol ever report to any officers or employees of Aerovias—

A. No.

Q. —or ever report to any officers or employees of Avianca Inc.?

A. No.

Q. I think you testified awhile ago that Helicol maintains its own separate set of books and records.

A. Correct.

Q. Do the people who keep these books and records report directly or indirectly to—or are they supervised by any officers or employees of Aerovias?

A. No.

Q. . . . any officers or employees of Avianca Inc.?

[26] A. No.

Q. What about the people in operations at Helicol; do they report to anybody at Aerovias or Avianca Inc., about their day-to-day operations?

A. No.

Q. People in sales or purchasing, do they report to people at Aerovias or Avianca Inc., about their day-to-day operations?

A. No, sir.

Q. Do the people in purchasing check first with anybody at Aerovias before they purchase equipment?

A. No.

Q. If Helicol wants or feels like it needs to buy a helicopter, do the people or the management of Helicol report or seek the advice or consent of people at Aerovias about this sort of purchase?

A. No. The management informs and seeks and obtains authority from the board of Helicol.

Q. Does Helicol or do any of its employees or officers ever buy equipment for Aerovias—

[27] A. No.

Q. —or ever buy equipment for Avianca Inc.?

A. No.

Q. Does Aerovias maintain any sort of internal control over the day-to-day operations of Helicol?

A. No.

Q. Does Avianca Inc., maintain any sort of internal controls over the day-to-day operations of Helicol?

A. No, sir.

Q. Does Helicol maintain and pay for its own insurance policies?

A. Yes, sir.

Q. Does Aerovias pay for any of the insurance that Helicol has?

A. No.

Q. Mr. Gonzalez, does Helicol have any employees in Texas?

A. No, sir.

Q. Does Helicol ever perform any of its helicopter operations in Texas?

A. No, sir.

Q. Has Helicol ever recruited employees in Texas?

[28] A. No, sir.

Q. Has it ever advertised for employees in Texas?

A. No, sir.

Q. Has it ever advertised for business in Texas?

A. No, sir.

Q. Has it ever advertised in any publication in Texas?

A. No, sir, not to my knowledge.

Q. Has it ever advertised in any publications in the United States?

A. Not to my knowledge.

Q. Has Helicol ever authorized anyone else to advertise for business in Texas on behalf of Helicol?

A. No, sir.

Q. To your knowledge, has Williams-Sedco-Horn ever engaged in any recruitment activities on behalf of Helicol in the United States?

A. Well, explain to me what do you mean by "recruiting activities."

Q. Recruiting for employees, for example.

A. No.

[29] Q. Has Williams-Sedco-Horn, to your knowledge, ever engaged in any recruiting activities for business on Helicol's behalf in the United States?

A. No.

Q. Has Williams-Sedco-Horn ever engaged, again to your knowledge, in any recruitment activities on Helicol's behalf in the United States?

A. No, sir.

Q. Has Williams-Sedco-Horn or has anyone ever been authorized to recruit in any fashion on Helicol's behalf in the United States—

A. No.

Q. —or any state thereof?

A. No.

Q. Has Helicol ever designated anyone in Texas or in the United States as an agent for service by process?

A. No.

Q. Does Helicol own or lease any property, either real or personal, in Texas?

A. No, sir.

Q. Or have any offices in Texas?

A. No, sir.

[30] Q. Or have any telephone numbers in Texas?

A. No, sir.

Q. Does it have a permit to do business in Texas?

A. Not that I know of, no.

Q. I assume that you would know if it did; is that correct?

A. Yes.

Q. The contract that was entered into by Helicol with Williams-Sedco-Horn for the transportation that was involved in this accident, was that contract negotiated or signed in the United States?

A. No, sir.

Q. Where was it signed, sir?

A. Lima.

Q. That's Lima, Peru?

A. Yes.

Q. Has Helicol ever negotiated or signed a contract in the United States to provide transportation?

A. No.

Q. Did the transportation provided for in the contract with Williams-Sedco-Horn involve travel to and from any point in the United States?

[31] A. You mean, from the point of Helicol?

Q. Yes, sir. What I mean is: Did Helicol agree in this contract to transport Williams-Sedco-Horn employees from one point to another in the United States?

A. No.

Q. Has Helicol ever entered into a contract with anyone that provided for transportation wherein Helicol would provide transportation within the United States?

A. Within the United States, no.

Q. From whom did Helicol purchase the helicopter involved in this accident, sir?

A. From the Bell Helicopter Company.

Q. Was it purchased from the Bell Helicopter plant in Fort Worth?

A. Yes, sir.

Q. Does Helicol on occasion purchase equipment such as helicopters or parts from companies located inside the United States?

A. Yes.

Q. This purchase of equipment, is that on an occasional or regular basis?

A. I would say on a regular basis.

[32] Q. How often would you be forced to purchase equipment or parts from United States based companies?

A. Well, let me see; weekly, monthly, as required.

Q. Just whenever you need. Is there a helicopter manufacturer in Colombia?

A. No.

Q. Is there a plant in Colombia that manufactures parts or equipment for helicopters?

A. No.

Q. So, whenever it is necessary for you to have additional parts for helicopters, on occasion you have to buy those parts from companies that are in the United States; is that correct?

A. Yes, sir.

Q. Does that require on occasion that you buy parts from companies inside of Texas?

A. I would say yes.

Q. Can you think of any company inside of Texas other than the Bell Helicopter plant at Fort Worth that you buy equipment from?

A. I can't think of anyone besides Bell, which doesn't mean to say that there might not be. There possibly would be.

[33] Q. What parts would Bell provide that you would find it necessary to have?

A. I would say structural parts perhaps; components sometimes.

Q. Does Bell provide the engines for the helicopters? Does it manufacture the engines?

A. No.

Q. When you need a part from an engine, do you go the manufacturer of that engine?

A. Yes, sir.

Q. Does Bell manufacture the drive shaft, the rotor shaft, and the propeller for helicopters?

A. I don't know.

Q. Do you know whether it manufactures the rotor shaft?

A. I don't know.

Q. Well, if you needed a part for a rotor shaft or for a propeller, would you go to the company that manufactured that rotor shaft or that propeller in order to get that part?

[34] A. Well, the purchasing department of Helicol through expedience, of course, decides in each case where the best source of replacement would be.

Q. Certainly.

A. Yes. So, I would say that varies.

Q. If one of your helicopters is damaged in some way in which the body is damaged, do you have a facility in Colombia or does Helicol have a facility in Colombia whereby it can repair a damaged body of a helicopter?

A. Yes, sir.

Q. So, would you find it necessary very often to buy replacement parts for a body of a helicopter, or would you simply repair the body of the helicopter yourself?

A. I think in certain cases we can manufacture under the company's specifications, of course, some parts. Other times they cannot be manufactured in Colombia, so it must be ordered from the factory.

Q. What I was really leading to: If the body of a helicopter is bent up or that sort of thing, would you repair that yourself, or would you send it back to the manufacturer to have that bent portion repaired?

[35] A. We would repair it ourselves. In other words, take, for example, a panel. If the panel can be repaired, we repair it. But if it's beyond repair, then, we order the panel from the manufacturer.

Q. Mr. Gonzales, is Helicol a profitable company in its own ~~own~~?

A. Yes, sir.

Q. Does it have to depend on Avianca Inc., or Aerovias for funds to operate on a day-to-day basis?

A. No, sir.

MR. GOFORTH: I don't have any more questions."

Beginning again on Page 71, line 1, examination by Mr. Goforth, and stopping at page 71, line 15.

Q. "Mr. Gonzalez, have any of these contracts that you referred to awhile ago—I think you referred to one with Occidental and one with Texaco.

MR. PLETCHER: And Sunoco, Sun Oil Company.

[36] Q. (By Mr. Goforth) And Sun Oil Company—have any of those been signed or negotiated in Texas?

A. No.

\* \* \*

[39] Q. "Do you have bank accounts in the United States?

A. No, sir."

\* \* \*

Q. "Now, do you do business with any other company that you can think of in the State of Texas other than Bell Helicopter Company?

A. Supposedly, yes, but I can't think of any other company that I know of.

Q. Whether you can think of the name of it or not, do you know that Helicol does do business with other companies in Texas besides Bell?

A. I say I don't know. I don't know because—by that I mean that I'm not saying no, but I'm not saying yes because I cannot think of any company now. But it's very possible.

Q. I understand. Has Helicol had any dealings with Williams Brothers or Williams-Sedco-Horn other than the contractual agreement that was made between Helicol and Williams-Sedco-Horn for helicopters involving this particular job down there where these people were killed in the crash?

[40] A. The only negotiations we have had with Williams-Sedco-Horn has been in connection with helicopter operations in Peru.

Q. Well, I appreciate your answer, and that may have answered my question. Is this the only contract that, to your knowledge, Helicol has had with Williams-Sedco-Horn in the past; this one we're dealing with in this particular case?

A. Well, I think there might have been more than one contract.

Q. When you entered into the contract with Williams-Sedco-Horn that is involved in this particular helicopter crash—

A. Yes, sir.

Q. —did you agree to carry insurance?

A I believe we did.

Q. Did you carry that insurance based upon American dollars?

[41] A. Yes."

\* \* \*

**Testimony of Joseph W. Branson**

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[44] Q. "Would you state your full name for the record please, sir?

A. Joseph W. Branson.

Q. Where do you live?

A. 6807 East 75th, Tulsa, Oklahoma.

Q. How old are you?

A. 62.

Q. What do you do for a living?

A. I am Administrative Manager for Williams Internation-  
al.

Q. What is Williams International?

A. An international pipeline construction company.

\* \* \*

Q. Have you ever been associated with a company called Williams-Sedco-Horn?

A. Yes, sir.

[45] Q. In what capacity were you associated with them?

A. Administrative Manager.

Q. When did you begin to work with them?

A. In the latter part of April, 1975.

Q. Where had you been working before?

A. I had been working with Williams Pipeline Company in Tulsa.

Q. Where did you work for Williams-Sedco-Horn?

A. Houston, Texas.

Q. You came to Houston when?

A. April of 1975.

\* \* \*

Q. What were your duties beginning in April of 1975?

A. I was Administrative Manager in the Houston office.

Q. What were your duties as Administrative Manager?

A. In charge of all office procedure and accounts and personnel in the Houston office.

Q. I'll show you what has been marked as Defendants' Exhibits 1 through 10 for this deposition and ask you if you recognize them?

A. Yes, sir. These are checks and wire transfers written for the Bell Helicopter 214B.

[46] Q. Who were the checks paid from and to?

A. The checks and transfers were drawn on the account of Williams-Sedco-Horn payable to Rocky Mountain Helicopter.

Q. Where was the account of Williams-Sedco-Horn located?

A. First City National Bank, Houston, Texas.

Q. Where were the checks payable, where is Rocky Mountain located?

A. The wire transfers were payable to a New York bank and the checks were payable to Rocky Mountain Helicopter mailing address in Denver, Colorado.

Q. Let me ask you to look at what the reporter has marked Defendants' Exhibits 11 through 36 and ask you if you can identify those?

A. And some mailed to Provo, Utah.

Q. Tell us what Exhibits 11 through 36 are?

A. Wire transfers and checks made payable to Helicol.

Q. What bank or what financial institution are the checks drawn on?

A. The wire transfers and checks were drawn on the First City National Bank in Houston, Texas.

[47] Q. Whose account were they drawn on?

A. Williams-Sedco-Horn.

Q. Where were the checks made payable to?

A. Helicol, Bank of America, Panama City, Panama, and the Bank of America in New York, New York.

\* \* \*

Q. I want to ask you some questions about the checks.

A. Yes, sir.

Q. Are these checks, Exhibits 1 through 36, part of the business records of Williams-Sedco-Horn?

A. Yes, sir, they are.

Q. Who is the custodian of the records and checks?

A. I am.

Q. Were the checks written in the ordinary course of business of Williams-Sedco-Horn?

A. Yes, sir, they were.

Q. Were they made at the appropriate date as shown on the checks?

A. Yes.

Q. Will you tell us generally the payment mechanism, how Helicol was paid by Williams-Sedco-Horn?

[48] A. An invoice would be presented by Helicol to our Lima, Peru, location and would be approved for payment in U.S. dollars and sent to our office in Houston and upon receipt of the invoice, we would make our payment.

Q. What currency was the payment made in?

A. U.S. dollars.

Q. Look at paragraph 8 of the contract between Helicol and Williams-Sedco-Horn.

A. Yes, sir.

Q. Paragraph 8 reads as follows:

'The monthly invoicing will be made up from Helicol to Consorcio, in American dollars, the first ten days of each month in their office in Lima and must be paid by the main office of Consorcio within 30 days following their presentation.'

Where was the main office of Williams-Sedco-Horn?

A. Houston, Texas.

Q. Where were the payments made under the contract?

[49] A. From the Houston, Texas, office.

Q. Was that something that went out under your direct supervision?

A. Yes, sir.

Q. Looking at each of the checks, is your signature on each check?

A. No, sir.

Q. How many of the checks are your name on?

A. They are on most of them. There are other signatures on two or three.

Q. Look at Exhibits 1 through 10, the checks to Rocky Mountain.

A. Yes.

Q. Can you tell us in general the procedure or why Williams-Sedco-Horn, which didn't have a contract with Rocky Mountain, was paying Rocky Mountain?

A. I was advised by Mr. Novak and Mr. Schexnailder to make payment of 10% of the invoice for Helicopter 214B to Rocky Mountain when the invoices were received from Helicol for such helicopter.

Q. 10% or 90%?

A. Excuse me; pay 90% to Rocky Mountain and 10% to Helicol.

[50] Q. What was your understanding of the relationship between Rocky Mountain and Helicol?

A. I understood that there was a contract between Helicol and Rocky Mountain whereby Helicol rented the Helicopter 214B from Rocky Mountain.

\* \* \*

[52] Q. "What kind of invoice are you talking about, who prepared it?

A. It would be an invoice for hours the helicopter was flown during the month.

Q. Who prepared the invoice?

A. The invoice would be prepared by Helicol and we were invoiced at our Lima office.

Q. Did you ever receive a Rocky Mountain invoice?

A. No.

Q. Why were the payments made in American dollars rather than the currency of Peru and Colombia?

A. I would imagine due to the stability of the dollar as compared to the Peruvian sol.

Q. You had mentioned to me earlier about the inflation of the Peruvian sol.

A. The reason you would want dollars is because the Peruvian sol when I first went to Houston was 38.38 per dollar. It is now 145 per dollar.

Q. While you were in Houston at the offices of Williams-Sedco-Horn, did you ever receive any communication from someone who said they were a representative of Helicol?

[53] A. I recall a telephone call two or three times from whom I presumed to be a woman in Los Angeles dunning me for collections of the Helicol invoices.

Q. Let's go back so I can understand what you told us. Who called you and where were you when you were called?

A. I was in Williams-Sedco-Horn office in Houston.

Q. How did that person identify herself?

A. I forget her name but she acted as a representative of Helicol and wanted to make collection of the invoice which we hadn't paid or we say at times would not have received the invoice from our Lima, Peru office.

\* \* \*

BY MR. GOFORTH (COUNSEL FOR HELICOL)

[56] Q. Did I understand you to say in accordance with the contract there was no payment ever made to Helicol to any Houston or Texas bank?

[57] A. That is correct.

Q. And in accordance with the contract there was no invoicing by Helicol to you in Houston?

A. I can't answer as to the contract, but we were not invoiced in Houston.

Q. You were invoiced in Lima, Peru, where the work was going on?

A. That is correct.

Q. This woman or whoever it was that called you, was it the same woman every time, or could you tell?

A. I thought it was.

Q. You couldn't really tell?

A. I can't recall.

Q. She was calling long distance? That is the one thing you are sure of, I guess?

A. Yes, sir.

Q. She wasn't calling from Houston?

A. That is right.

Q. Did she tell you she was calling from where?

A. Los Angeles.

Q. She told you that?

A. Yes, sir.

[58] Q. I don't guess you had any reason to believe that she was calling from anywhere in Texas?

A. No, sir.

Q. You don't know of any Helicol office in Texas, do you, sir?

A. No, sir.

Q. You don't know of any representative in Texas of Helicol?

A. No.

Q. Now this mysterious Helicopter 214B you were talking about, tell me the basis of your understanding with regard to this Helicopter 214B. Were you just told about it, everything you know were you told about it by Mr. Novak?

A. Yes."

Ending with line 22, p. 14, and beginning on p. 16, line 12:

Q. "What sort of arrangements were there between Williams-Sedco-Horn and Rocky Mountain?

A. None.

Q. You paid Rocky Mountain?

A. Yes.

[59] Q. In Denver or Provo?

A. In both locations.

Q. And you said as a result of invoices you received at the office in Lima?

A. And received at our Houston office.

Q. From the Lima office?

A. Yes.

Q. From your people in Lima?

A. With the Helicol invoice.

Q. That was received from your people in Lima?

A. Yes."

\* \* \*

[Testimony of Francisco Restrepo]

MR. GOFORTH (COUNSEL FOR HELICOL)

[62] Q. Mr. Restrepo, would you state your name for the record, please, sir, and spell it, if you would?

A. My name is Francisco Restrepo, R-e-s-t-r-e-p-o.

Q. Mr. Restrepo, what is your address, sir?

A. My address is Calle Cententa 70 No. 6-76, Bogota, Colombia.

Q. Are you a citizen of Colombia?

[63] A. Yes.

Q. Have you lived in Colombia your entire life?

A. Yes.

\* \* \*

Q. By whom are you employed, Mr. Restrepo?

A. By Helicol.

Q. What is your position with Helicol?

A. Manager.

Q. Tell us, if you will, what responsibilities you have as manager of Helicol?

A. I have to take care of the organization of the whole business of the company.

[64] Q. Do you understand what chief executive officer is in the United States in the corporate terminology of the United States?

A. Yes.

Q. Are you the chief executive officer of Helicol?

A. I may say so.

\* \* \*

[64] Q. Tell the Court if you would, Mr. Restrepo, what Helicol does?

A. We provide helicopter service for oil and construction companies. We do some spraying and we also provide maintenance services for third parties.

[65] Q. Before we go any further, Mr. Restrepo, do you know Mr. Jorge Gonzalez?

A. Yes, very well.

Q. Is he knowledgeable with regard to the affairs of Helicol?

A. Very well.

Q. Mr. Restrepo, in what country does Helicol operate?

A. Besides Colombia, Ecuador, Peru, some work in Brazil and Nicaragua.

Q. Has Helicol ever performed any work in the United States?

A. No.

Q. Has Helicol ever entered into a contract for the performance of any work in the United States?

A. No.

Q. Does Helicol have any offices in the United States?

A. No.

Q. I know this is a part of it, but I want to get it on the record, does Helicol have any offices in Texas?

A. No.

[66] Q. To your knowledge, has Helicol ever had any offices in Texas?

A. No.

Q. Has or does Helicol own any property in Texas?

A. No.

Q. Does Helicol have any agent for process in Texas?

A. No.

Q. Mr. Restrepo, are you familiar with Avianca, Inc.?

A. Yes.

Q. To your knowledge, does Avianca, Inc., have an office in Texas?

A. Yes.

Q. Does it have an office in Houston?

A. Yes.

Q. Is that office in Houston an agent for service or an agent for any purpose of Helicol?

A. No.

Q. Has the office in Houston, I believe it's at 2990 Richmond, ever performed any functions for Helicol?

A. No.

[67] Q. Have they ever purchased any parts for Helicol?

A. No.

Q. Has that office ever transferred any money to any company for Helicol?

A. No.

Q. Has it ever participated in any fashion, to your knowledge, in the purchase of helicopters from Bell Helicopter?

A. No.

Q. Mr. Restrepo, were you employed as general manager of Helicol during the period of time that Helicol performed its contract with Williams-Sedco-Horn in the Amazon Jungle?

A. Yes.

Q. Tell me what Helicol's responsibilities were with regard to that contract, if you will?

A. To provide helicopters for the needs of Williams in the construction of pipeline.

Q. What sort of pipeline was it?

A. It was North Peruvian Pipeline and it was built to move the oil from the jungle up to the Pacific Coast.

\* \* \*

[68] Q. Was the contract executed in Spanish?

A. Yes.

Q. Was the contract executed in English?

A. No.

Q. Is there an English contract?

A. No.

Q. All right.

MR. GOFORTH: So, Your Honor, there is only one contract.

THE COURT: Is there a translation of it?

MR. GRAHAM: There is a Berlitz translation. Since we have got an interpreter here, I don't think there's any—

THE COURT: Is the Berlitz translation attached to the contract?

[69] MR. GRAHAM: It's not. It was attached to interrogatories to the plaintiff asking him if it was a true translation. They said yes, generally.

THE COURT: Let's go ahead and put them both in.

\* \* \*

[70] Q. Mr. Restrepo, I would like to show you what has been marked for identification as Exhibit No. 3, and ask you to identify that if you can, please, sir?

A. The last page here—

Q. The last page is missing, sir. That's the reason I want to show you what has been marked as Helicol No. 1, which Mr. Graham gave me, and ask you if you would look at the last page and see if that appears to be the last page of the document?

A. No. This is not the last page. The signature—it looks like the contract was signed between Williams-Sedco-Horn and Helicol.

Q. Who signed the original contract, I believe dated—what was the date of the original contract, sir?

A. As I recall it was the 11th of November, 1974.

Q. All right. Who signed that in behalf of Helicol?

A. Lawyer who represents Helicol in Peru, the name Gonzalo Garland Iturralde.

[71] Q. Who signed for Williams-Sedco-Horn?

A. Gerald Riga.

Q. Is Mr. Riga located in Peru?

A. Used to, yes.

Q. Do you know what his job was?

A. No. I understand he was transferred from there.

Q. What was his job in 1974 when he signed this?

A. He was responsible for the construction of pipeline in behalf of Williams-Sedco-Horn.

Q. Now, who was Dr. Gonzalo Garland who signed for Helicol?

A. He is a lawyer of Helicol in Peru.

Q. Where was this signed and executed?

A. In Lima, Peru.

(An instrument was marked Helicol No. 2 for identification.)

Q. I show you what has been marked as Helicol No. 2. I think that should not be marked Helicol No. 2, but it is. Have you ever seen that?

A. No. It's my first—what is this, it's a translation?

[72] Q. Yes. A translation by Berlitz Translation Service. You say you have never seen it?

A. No.

Q. You can't identify that?

A. No.

Q. All right. This contract, Mr. Restrepo, why was it executed for Helicol by a lawyer in Peru, can you tell the Court that?

A. Because it has to be done according with the Peruvian laws.

Q. The contract had to be executed in accordance with Peruvian laws, is that what you said?

A. Yes.

Q. Which Peruvian governmental agency handled the contractual negotiations?

A. The Peruvian Air Force.

Q. Did they participate in the writing of the contract?

A. Yes, they have to approve the contract.

Q. Do you recall who approved the contract and what part they played in the contract?

A. The man in charge in Peru is the Group Three Commander and I don't recall exactly who it was at that time, but maybe Colonel Salater, maybe, or there are several different commanders at Group Three.

[73] Q. Did he actually approve the contract?

A. I have to approve it. They have to see the whole contract.

(An instrument was marked Helicol Exhibit No. 3 for identification.)

Q. (By Mr. Goforth) All right. It's something up here on the left top at the left of Helicol No. 3. Do you recognize that insignia, sir?

A. It is the official papers of Peru.

Q. So the contract even had to be printed on official papers of Peru?

A. Yes, sir.

Q. Did you participate, Mr. Restrepo, in writing this contract?

A. Yes.

Q. Had you had any prior dealings with Williams Construction Company? By you, I mean Helicol or Williams Brothers Construction Company.

[74] A. What did you say?

Q. Had you had prior dealings or prior contracts with Williams Brothers?

A. Yes.

Q. Do you know where Williams Brothers is headquartered, sir?

A. Yes, in Tulsa, Oklahoma.

Q. Did you have what you considered to be a good relationship with Williams Brothers?

A. Yes.

Q. Did you know some of their officers and employees?

A. Yes.

Q. Where had you done work for Williams Brothers?

A. In Colombia and construction on the Trisalian Pipeline between the Corito Field and Pomaco, which is a Pacific port.

And later on in Ecuador, the construction of the Trans-Peruvian Pipeline — Trans-Ecuadorian Pipeline, excuse me.

Q. Had you ever done any work for Williams Brothers or Williams Construction Company in Texas?

A. No.

Q. Had you ever done any work for them in the United States?

[75] A. No.

Q. Just to make it perfectly clear, Mr. Restrepo, this contract was not executed in the United States, is that right, sir?

A. No.

Q. It was not executed in English, is that right?

A. No.

Q. It was not executed in English?

A. No.

Q. Okay. It was executed on November 11, 1974, as evidenced by the contract itself, is that right?

A. Will you explain that question, please?

Q. The contract was executed in November of 1974, is that correct?

A. Yes.

Q. Mr. Restrepo, did you have an occasion in October, 1974, to come to the United States?

A. Yes.

Q. Tell the Court where you came in the United States?

[76] A. I came—I received a call from Mr. George Littlejohn, at that time who was the president of Williams International. He called me to come over to Tulsa to visit him and find out what will be their needs for the job in Peru.

Q. Had you already known Mr. Littlejohn?

A. Yes.

Q. How long had you known Mr. Littlejohn?

A. Back in 1968 or '69.

Q. Had you had previous dealings with him?

A. Yes, for the Transanian Pipeline in Colombia.

Q. Did you consider Mr. Littlejohn to be a friend?

A. Yes.

Q. Do you recall what the date was they called you and asked you to come to the United States?

A. Maybe the—about the end of September, 1974, it was.

Q. How did you come to the United States, by what means of transportation?

A. Through Braniff International, through Miami, connected to Tulsa, Miami, Tulsa flight.

[77] Q. So you went to Tulsa?

A. Yes.

Q. Do you recall the date you arrived in Tulsa?

A. October 2nd.

Q. Is that where Mr. Littlejohn was?

A. Yes.

Q. What did you discuss with Mr. Littlejohn?

A. We—I received a call from some official of Williams telling me that they decide to have a meeting in Houston, so that we will fly in one of the Williams' aircraft from Tulsa to

Houston. So they pick me up early in the morning in my hotel in Tulsa, we flew down to Houston and we had a meeting here.

Q. Who picked you up at the hotel?

A. One of Williams' officials. I don't recall his name.

Q. Was Mr. Littlejohn present?

A. Yes. He flew with us to Houston.

Q. This was a Williams Construction Company jet that you flew down from Tulsa?

A. Yes.

Q. Do you recall about what time it was you arrived in Houston?

[78] A. Early in the morning. We flew from Tulsa down to Houston very early in the morning, seven o'clock, something like that.

Q. Did you have your wife with you?

A. She stayed in Tulsa.

Q. She had flown up to Tulsa with you?

A. She flew to Tulsa with me. She stayed in Tulsa in October 3rd, I would say.

Q. How long did your discussion in Houston last and who was present?

A. Ten to fifteen people was present at the meeting and I deal mostly with Mr. Littlejohn and Mr. Riga.

Q. What was discussed?

A. The amount of capital they may need, the weight of the joints, the pipe, the general terms and technical conditions.

Q. Are you talking about the helicopters themselves, what they needed in the way of helicopters themselves?

A. The size of the helicopter they need to move the pipe.

Q. Was anything else discussed?

A. No. No. They asked me to find out what the delivery date will be for a bigger helicopter, the 214 and I called the Bell factory and that's all.

[79] Q. Mr. Novak, do you know Mr. Novak with Williams?

A. Yes. I didn't have a close relationship with him, but I know him, yes.

Q. He testified in his deposition that you made the deal down here in Houston, that is where you entered into the agreement to—for Helicol to provide the helicopter services, is that right?

A. They called me to discuss the amount and the size of the helicopter, but the deal was already done, like I said, in Peru.

Q. The agreement you are saying was already made?

A. Yes, I say so. Yes. Because they called me—one operator with Helicol and George Littlejohn called me to come over and discuss the amount of helicopters and the size of the helicopters, but the deal was already done in Peru with George Littlejohn and Riga.

Q. In other words, the agreement between Williams and Helicol was already made?

[80] A. My impression, they want me to come over and to meet the others, the members of their company.

Q. So they wanted you to come over here so that they could introduce you around?

A. To meet the officials of the other Sedco-Horn, because he was very familiar with Williams at that time.

Q. Was there anything said at all about you acting for or getting additional work anywhere in the world when you were here in Houston on that visit?

I don't think I made it very clear. I'm not sure anybody that spoke perfect English could understand that.

Did you solicit or ask for additional business of any sort of kind of Williams or Williams-Sedco-Horn when you were here in the United States on that visit?

A. No.

Q. Was anything discussed other than the details of the type helicopters and that sort of thing that you have already testified to?

A. No.

Q. Mr. Restrepo, tell the Court, if you will, where this contract was to be performed, where were you supposed to do the helicopter work?

[81] A. In the Amazon-Peruvian Jungle.

Q. Was it to be performed anywhere other than in Peru?

A. No.

Q. Do you know whether or not Williams-Sedco-Horn had any operations anywhere other than Peru?

A. They have got operations in Colombia and Ecuador, as well as—I know nothing else.

Q. Are you talking about Williams or are you talking about Williams-Sedco-Horn?

A. Oh, Williams-Sedco-Horn only in Peru.

Q. You're speaking of Williams, weren't you?

A. Yes.

Q. Williams, of course, has had other jobs?

A. Yes.

Q. But this is the only job that you're aware of that Williams-Sedco-Horn had?

A. Yes.

Q. Where did you get paid for your services?

A. We invoiced in Peru and they pay us through our bank.

[82] Q. So you demanded payment in Peru?

A. In Peru, yes, sir.

Q. You didn't write an invoice and send it to Houston?

A. No.

Q. After you invoiced in Peru, I guess you forgot about it until you were paid?

MR. GRAHAM: I am trying to be patient, but I have got to object to Mr. Goforth testifying.

THE COURT: The form of the question is bad. I sustain the objection.

MR. GOFORTH: Yes, Your Honor.

Q. (By Mr. Goforth) Let me ask you this: How did Williams-Sedco-Horn respond to your demand for payment in Lima?

A. We send the invoice and according to the terms of the contract, they send us a check back. They deposit the amount in our bank.

Q. Which bank are you talking about?

A. We are talking about the Bank of America and the Bank in Panama or here, I don't recall exactly where.

[83] Q. You said here?

A. Here in the New York branch of Bank of America.

Q. Was there any payment ever made to any bank in Houston?

A. No.

A. Was there any payment ever made in any bank in Texas?

A. No.

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Q. Mr. Restrepo, just let me ask you a few more questions, sir, just for the purposes of clarity.

Do you know of any other Avianca, Inc., offices in Texas other than the Houston office?

A. No.

Q. If there are any, if there were any offices in Texas, have Avianca, Inc., ever served as an agent in any fashion for Helicol?

A. No.

Q. They have never done any work for Helicol at all?

A. Never.

Q. They have never transmitted any invoices?

A. No.

[84] Q. Never transmitted any parts?

A. No.

Q. Never served as go-between, between Helicol and any prospective client?

A. No.

Q. Anything like that.

Mr. Restrepo, is Helicol owned primarily, I think, ninety-four percent by Aereovias?

A. Yes.

Q. Is it in any fashion a branch or a division of Aereovias?

A. No. It's an independent company.

Q. Does it perform all of its own functions administrative and management functions?

A. Yes.

\* \* \*

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[86] Q. Mr. Restrepo, my name is Mike Graham, I am the lawyer for Williams-Sedco-Horn.

I will show you a document which we will number later that is a promissory note containing Bell Helicopter records.

I wonder if you can identify the signature on that promissory note.

I will represent to you that that is the promissory note for the helicopter that crashed. Is that your signature?

A. Yes.

Q. All right. Whose signature is down below yours?

A. Mr. Pretelt, Sabas Pretelt.

Q. Who is he?

A. He was executive vice-president and later president of Avianca.

Q. Avianca?

A. Aereovias Nacionales De Colombia.

Q. Do you read English well?

Let me read this into the record about what the president of Avianca-Aereovias signed:

"For value received, Colombia, as primary obligor(s) hereby unconditionally guarantee(s) the prompt payment of principal and interest on the foregoing promissory note when and as due in accordance with its terms, and hereby waive diligence, demand, protest or notice of any kind whatsoever, et cetera, et cetera, et cetera."

Isn't it true, Mr. Restrepo, that Aereovias guaranteed your payment obligation when you purchased the helicopter that crashed?

[87] A. Yes.

Q. There are some tie-ins between Aereovias and your company, one of which they guaranteed your purchase of helicopters?

A. I may say yes. It is a guarantee, but we pay for the guarantee. We pay Avianca for their support in several respects besides in financing aspects.

Q. Tell me about Avianca, Inc. Mr. Gonzalez, when his deposition was taken, couldn't tell us what they were or what they did. Do you know?

A. I know the assistance of Avianca, I know the relationship between Aereovias and Avianca. I am not familiar with the organization at all.

[88] Q. Do you know Avianca, Inc., the subsidiary of your parent company, has an office here in Houston?

A. Yes.

Q. But you don't know what Avianca, Inc., does at all?

A. I know they serve Aereovias, but I have no relationship with Avianca, Inc.

Q. Tell me a little more about your company, who your primary customers are.

A. Oil customers.

Q. Which oil companies?

A. Several oil companies, Texaco, Mobil, Gulf, Superior Oil, Occidental, several.

Q. Amoco?

A. Amoco.

Q. Exxon?

A. Exxon, yes.

Q. Are you aware that all of those companies are located primarily in Houston?

A. I don't know. I have no idea. I deal with them in Colombia and other countries. I have no idea where they stay. I sign the contracts in Colombia.

[89] Q. Is it true your company is in the primary business of providing helicopter services to American oil companies?

A. It's service to any company. We serve oil companies, fresh oil companies, any other company.

Q. Do you currently have operations in Peru?

A. Yes.

Q. What are you doing in Peru now?

A. Actually no, we finished the contract.

Q. You don't have an office in Peru now?

A. No, not any more.

Q. You don't have any plans to be in Peru in the foreseeable future, do you?

A. Maybe so, I don't know.

Q. You don't have a deal cooking right now that is going to put you in Peru tomorrow or next week or even next year?

A. Not now, no, I don't foresee any possible jobs in Peru.

\* \* \*

[94] Q. I just want to know who wrote the answers.

Let's move towards your contract with Williams-Sedco-Horn. You are aware, sir, that the contract was with an entity called Williams-Sedco-Horn?

A. Yes.

Q. It wasn't a contract with Williams?

A. No. Williams-Sedco-Horn.

Q. The deal—you were aware that the contract had to be approved by Williams and by Sedco and by Horn?

A. I don't know. Mr. Riga signed the contract in behalf of the name of Williams-Sedco-Horn. I have no—not familiar with the arrangement Williams and Sedco-Horn did have.

Q. When you came to Tulsa, you talked with Mr. Littlejohn?

[95] A. Yes.

Q. Mr. Littlejohn is dead now, are you aware of that?

A. Yes.

Q. Did Mr. Littlejohn tell you in your meeting at Tulsa that he could only speak for Williams?

A. No. We had no meeting in Tulsa at all. We come over from Tulsa to Houston and the meeting was here.

Q. Are you telling us that there were no negotiations at all in Tulsa?

A. No.

Q. You simply got on an airplane, landed in Tulsa, then came straight to Houston the next day?

A. Yes.

Q. What was your understanding of why you were going to Houston?

A. Because George Littlejohn asked me to do that.

Q. How did you go to meet in Houston?

A. Some other persons from the consultant, whatever you call.

[96] Q. You were aware that the manager from Williams, from Sedco and Horn and their assistants were all meeting in Houston, were you not?

A. For Mr. George Littlejohn called me to Colombia and asked me to come to Tulsa, which I did.

Q. Why did he ask you to come to Tulsa?

A. Because he want to discuss with me, talk with me about the amount of helicopters and the size of helicopters they may need.

Q. This was in Oklahoma?

A. Yes.

Q. The contract was signed in Lima in November?

A. Yes.

Q. Now, earlier in your testimony, did you say that the deal was actually made in September?

A. No. Mr. Littlejohn called me about the end of September. I have right here—October 2nd.

Q. So you came to Tulsa for the purpose of—did you have a deal at that time?

A. I may say so, yes.

[97] Q. When did you have the deal?

A. A few days before, because George called me and told me that he was—he want us to do the job.

Q. He called you on the telephone?

A. Yes.

Q. In September?

A. At the end of September, yes, and he asked me to come over Tulsa to meet the other people that I never knew and he asked me to come with him in his own plane to Houston.

Q. But you came from Colombia to meet Mr. Littlejohn to talk about a contract, about making a contract?

A. I may say it was a deal already, because he asked me to come over and discuss the amount and the size of the helicopter and the technical matters of the helicopters.

Q. Back in September when you first had your understanding of the deal, were you aware that the deal was going to be between Williams-Sedco-Horn or just Williams?

A. I have no information about the relationship between Williams-Sedco-Horn at that time.

[98] Q. Maybe you misunderstood my question or I put it badly. In September when you talked with Mr. Littlejohn on the phone about making a deal, who did you understand the deal would be with?

A. With Williams, with Williams, because my relationship had been in Colombia and Ecuador with Williams. I have no way to know the difference between Williams, Sedco and Horn. It's not my business.

Q. You ended up with a deal with Williams-Sedco-Horn?

A. Yes, sir.

Q. You understand that is different than just Williams?

A. Yes.

Q. When did you learn that the deal would be with Williams-Sedco-Horn and not Williams?

A. When they write down the contract. We agreed they put Williams-Sedco-Horn was my first information about that.

Q. When did you first meet someone who you knew worked for Horn?

A. I have—I don't recall anybody I met, anybody from Horn or Sedco.

[99] Q. Did you ever meet a man named Tallichet, who is with Brown & Root and Horn?

A. I don't recall. He—maybe he was at the meeting. I don't recall.

Q. Let me ask you about that meeting. What did you talk about in that meeting?

A. The amount and the size of the helicopter they need.

Q. How long did you talk with these people?

A. For an hour or so.

Q. Who asked you questions?

A. Riga and Littlejohn, some other people that I don't recall his names.

Q. Did some people from Sedco or Horn ask you questions?

A. Maybe so, I don't recall.

Q. Why did you answer their questions?

A. I was there to answer the questions about the use of the helicopter in the pipeline.

Q. Are you telling us that you already had a deal with Williams-Sedco-Horn when you were talking with them about it?

A. I was under that impression, yes.

Q. Do you recall that after the first hour of the meeting, where you had answered their questions, they sent you out of the room?

[100] A. Yes, they send me out of the room, yes.

Q. Did they tell you that was because they were going to discuss whether or not to make a contract with you and to vote on that?

A. I have no idea.

Q. You don't know what went on?

You have to answer out loud.

A. I don't know.

Q. They didn't tell you they wanted to discuss and vote on the contract?

A. They said they was finished with me, nothing else.

Q. Do you recall that after they sent you out of the room they asked you to come back in?

A. No.

Q. How many times were you in the room?

A. Two times. I make a phone call to find out what was the delivery time of the 214 helicopter. The 214.

Q. The 214 was going to be used on this job?

A. They were thinking to use the 214, yes.

Q. Were you instructed to leave the meeting and go call Bell and find out when you could get a helicopter?

[101] A. Yes.

Q. That was something they wanted to know before they made a deal with you?

A. I don't know.

Q. What other of their questions did you answer during this meeting?

A. The size and the capacity and the amount of helicopter that I may have ready to perform the job and when and how.

Q. Did you discuss how you were to be paid?

A. No.

Q. Why did you not want to be paid in Peru?

A. We don't care, because we don't have a bank account in Peru and even though we have a permit from the Peruvian Government, we are a Colombia company, have to be paid in our checking account.

Q. You didn't want to be paid in Colombia?

A. Yes. We have to write to receive foreign currency in Colombia.

Q. Well, this contract, you didn't want to be paid in either Colombia or Peru?

A. We had to inform all the Colombian authorities about the amount of dollars we will receive from every country.

[102] Q. This contract, the checks are in evidence, you were not paid in Colombia or Peru, were you?

A. Put in our account.

Q. In New York and in Panama?

A. In New York and in Panama.

Q. How long did you spend in the meeting with the people in Houston?

A. About an hour or so.

Q. When did you leave Houston?

A. That particular afternoon back to Tulsa. My wife was waiting for me at the hotel in Tulsa.

Q. In the meeting, do you recall discussions that Williams-Sedco-Horn needed a helicopter immediately in Peru, that in order to begin the construction a survey had to be performed in late October and that they needed a helicopter within ten or fifteen days in Peru?

[103] A. I don't recall exactly the word immediately, but I guess so. They always work in a hurry.

Q. Do you recall that you were told that the 205 helicopter would have to be on the job in Peru by October 28th?

A. I don't recall exactly the dates, but I think so, yes.

Q. Well, let's do it this way:

Do you recall that they needed the helicopter down there working before a contract would be signed later on in Peru?

A. Had to be accepted in any way by the Peruvian Air Force, have to be authorized by the Peruvian Air Force.

Q. Do you recall they wanted a helicopter down there on October 28th and you promised to have it there and that you promised you would sign the agreement later on, but the first thing was to get the helicopter down there within ten or fifteen days?

A. I may say so, yes.

Q. It's a fact then you were already working on the job before the papers were signed in Peru?

A. With the approval of the Peruvian Air Force, yes. This is a type of letter of intent, something like that.

Q. The later contract was a formality, is that correct?

[104] A. Yes, as always is. It's typical with the oil companies and pipeline companies.

Q. In the meeting in Houston you promised to begin operations within the next few days and in the meeting you agreed on a price, did you not?

A. For the 205, yes.

Q. In Houston you talked money with Williams-Sedco-Horn and you agreed on what the price would be?

A. I never discuss. I provide my rates. My actual rates. That's all.

Q. They said that's fine and you shook hands on it in Houston?

A. I never shake hands.

Q. Do you recall shaking hands and saying, "We have got a deal" in Houston before you left the room?

A. No.

MR. GOFORTH: Your Honor, he's already testified about when the deal was made. Counsel is testifying now.

THE COURT: That's the first time a lawyer ever did that.

[105] Q. (By Mr. Graham) Do you recall in December of 1974 that you asked Williams-Sedco-Horn to provide the financing for the acquisition of the helicopter?

A. Yes.

Q. How was that going to be arranged?

A. They want us to buy a 214 for the movement of the heaviest joints and we was trying to figure out some deal with Mr. Littlejohn, yes.

Q. Did Helicol formally request Williams-Sedco-Horn to give it a letter of credit to buy a helicopter?

A. To perform the job for them, yes.

Q. How did Helicol take its helicopter into Peru. I understand you needed a permit to do that.

A. Yes.

Q. Where did the permit come from?

A. From the—it's a Director of Civil Aviation in Peru and from the Peruvian Air Force both.

Q. Did Williams-Sedco-Horn get those permits for Helicol?

[106] A. No. Helicol did.

Q. Helicol could get a permit like that by itself?

A. Yes, we have to.

Q. Do you have a copy of the contract with you?

I will read from the English if you will work from the Spanish, if it's more comfortable.

Paragraph No. 8 says:

"The monthly invoicing will be made up from Helicol to Consorcio in American dollars the first ten days of each month in their offices in Lima, and must be paid by the main office of the Consorcio within thirty days following their presentation."

MR. PLETCHER: Could we have in the record that this word "Consorcio" has been used several times. My contract refers to Williams-Sedco-Horn.

THE COURT: That's fine. That's what I've been using it for.

Q. (By Mr. Graham) Do you see that paragraph eight?

[107] A. Yes.

Q. You can read English and Spanish now.

Paragraph 8 talks about a Lima office of Williams-Sedco-Horn, and a main office of Williams-Sedco-Horn, does it not?

A. Uh-huh.

Q. Is your understanding of—what is your understanding of where the main office of Williams-Sedco-Horn was?

A. I don't know. At that time I did not know.

Q. Do you know now where the main office of Williams-Sedco-Horn is?

A. I heard today it's here in Houston.

\* \* \*

[109] Q. You are an international businessman, are you not, sir?

A. Yes, basically, yes.

Q. Are you familiar with the restrictions placed upon the import and export of currency from countries like Peru?

A. Yes.

Q. You are aware then that if you were to be paid dollars in Peru, there are some difficulties in getting dollars out of Peru?

A. This still was accepted by the Peruvian officials as this.

Q. You are aware, though, that in the abstract that if you have dollars from Peru there may be difficulty in getting them out?

A. Yes.

Q. In fact, there is a forty percent Peruvian export tax on dollars?

MR. GOFORTH: I object. Counsel is testifying and getting maybes and this and that from the witness.

THE COURT: It's a legitimate question.

MR. GOFORTH: I didn't go into it on direct.

THE COURT: I understand. He's got him on cross, the burden on special appearance, I think, it's germane or at least it's possible it will be.

Go ahead.

[110] Q. (By Mr. Graham) Isn't the reason that the contract called for payment to be made in New York or in Panama a way to avoid having to get the money or getting the money in Peru and not being able to get it out?

A. Yes.

\* \* \*

[111] Q. Did any representative of Helicol ever call Williams-Sedco-Horn in Houston inquiring about invoices?

[112] A. No, not here. We don't have any representative in Houston at all.

Q. I'm not asking whether a Houston representative called, I am asking whether someone from Helicol telephoned Houston asking when the invoices would be paid.

A. I don't recall. No, not directly from my office. No.

Q. What about any of your other employees?

A. Maybe so, I don't know.

Q. It's certainly not out of the question, is it?

A. It's a possibility, yes.

Q. We have heard some testimony about Rocky Mountain. Do you know of a company called Rocky Mountain Helicopters?

A. Yes.

Q. As I understand it, they were a subcontractor under your contract with Williams-Sedco-Horn?

A. Yes, in Peru.

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Q. They supplied a 214 Helicopter?

A. Yes.

[113] Q. That is a Bell Helicopter?

A. Yes.

Q. Comes from Fort Worth?

A. Yes.

Q. How did you become acquainted with Rocky Mountain?

A. The vice-president of that company at that particular time was Mr. Pat Patterson, who used to be a Helicol pilot.

Q. During the project in Peru, a Bell 214 Helicopter was needed, is that correct?

A. Yes.

Q. Helicol did not have a Bell 214 Helicopter?

Q. Yes.

Q. Did Helicol try to find a 214 helicopter?

A. Yes.

Q. Did you try to buy one from Fort Worth?

A. I am trying to lease one from Fort Worth.

Q. How did you try to do that, did you go to Fort Worth?

A. Yes.

Q. Did you personally go to Fort Worth?

A. Yes. I was there. Yes.

Q. And that was to obtain a 214 helicopter?

A. Yes.

Q. For work on the Williams-Sedco-Horn contract?

[114] A. Yes.

Q. And as I understand, Bell did not have one they could give you in time?

A. They decided not to lease the helicopter, so we got together with Rocky Mountain.

Q. Were you introduced to Rocky Mountain by Williams-Sedco-Horn?

MR. GOFORTH: Your Honor, I think he already testified he knew of Rocky Mountain through Pat Patterson, who had been a pilot of Helicol.

A. I am familiar with most of the helicopter companies in the United States.

THE COURT: Overrule your objection.

Q. (By Mr. Graham) Isn't it correct that Williams-Sedco-Horn told you at this time they're only three 214's in existence in the whole world, is that correct, a very small number?

A. Yes.

Q. Williams-Sedco-Horn told you that Rocky Mountain had one, is that correct?

[115] A. Yes.

Q. All right. Now, Williams-Sedco-Horn arranged for you to meet with Rocky Mountain to discuss subcontracting the 214 for work in Peru?

A. Yes.

Q. Now, Helicol was not going to fly the 214, it was going to be flown by Rocky Mountain?

A. Yes.

Q. Helicol was to be paid—was to bill Williams-Sedco-Horn for the time of the Rocky Mountain helicopter?

A. Yes.

Q. There wasn't a contract between Rocky Mountain and Williams-Sedco-Horn that you are aware of?

A. I don't know.

Q. But there was a contract between Helicol and Rocky Mountain?

A. Yes.

Q. Well, what would happen is that Rocky Mountain would fly the helicopter and Helicol would send a bill for that to Williams-Sedco-Horn?

A. And we provide some services for Rocky Mountain. We handled the contract there. We had to get in touch with the authorities and everything else in each portion of the country we handled that.

[116] Q. Your company, Helicol, did not pay Rocky Mountain, did it?

A. No.

Q. Who paid Rocky Mountain?

A. I don't recall exactly what was the deal, but maybe Williams paid Rocky Mountain and we received a portion of the payment.

Q. Williams-Sedco-Horn and the checks are here, the Houston office paid Rocky Mountain for you, is that correct?

A. I don't recall exactly how was the deal. I recall that we received a portion of the payment and we send the invoice according with the information that was in from the field.

Q. You sent an invoice to Williams-Sedco-Horn telling Williams-Sedco-Horn to pay Rocky Mountain for you?

A. Uh-huh.

Q. Is that yes?

A. As I recall, yes.

[117] Q. Williams-Sedco-Horn did not owe Rocky Mountain any money directly, they were acting as your agent for payment?

A. Say it again, please.

Q. Williams-Sedco-Horn did not owe Rocky Mountain any money, because their contract was with your company?

A. Yes.

Q. When they paid Rocky Mountain, they were acting as your agent for payment?

MR. GOFORTH: That is asking for a legal conclusion of a Colombian National.

THE COURT: Overrule the objection.

Q. (By Mr. Graham) When Williams-Sedco-Horn paid Rocky Mountain, they were acting as the agent for Helicol?

A. No, I don't get it.

Q. Let me begin at the beginning.

Helicol owed money to Rocky Mountain?

A. Yes.

Q. Williams-Sedco-Horn did not owe money to Rocky Mountain?

[118] A. Yes.

Q. So when Williams-Sedco-Horn sent a check from Houston to Rocky Mountain, they were doing that for Helicol?

A. They were accepting some instructions for the payment, that's all.

Q. They paid Rocky Mountain the amount of money Helicol told them to pay Rocky Mountain?

A. Yes. Yes.

Q. Williams-Sedco-Horn did not decide what to pay Rocky Mountain, but it was acting on Helicol's instructions?

A. Yes.

Q. And the payment was a payment on the account of Helicol?

A. Yes.

\* \* \*

[119] Q. I want to show you the one I want to look at, I will show you a document in the deposition upon written questions of Bell Helicopter. It appears to be a Telex No. 273 dated November 5, 1974. It's both in English and Spanish addressed to Mr. Jorge Gonzalez and it reads:

"Hernan De Los Rios Funcionario Helicol Llegara Esa Viernes 8. Hernan De Los Rios, Helicol officer, will arrive there Friday the 8th."

Meaning, I assume, Friday, the 8th of November. Can you tell us who Mr. De Los Rios is?

[120] A. It's De Los Rios is second man in the maintenance activity of Helicol.

Q. Why was he going to Bell Helicopter four days after you had entered into an agreement to provide helicopters for Williams-Sedco-Horn?

A. I don't recall this, the reason of his travel.

Q. Was it related to the contract?

A. I don't recall.

Q. Is it possible?

A. I don't know. We have several people coming to the factory and back for many reasons. There is a possibility, but I don't know. I don't recall exactly.

Q. I understand that all of your helicopters or substantially all of your helicopters are purchased in Fort Worth?

A. Yes.

Q. And you have company people in Fort Worth almost all the time?

[121] A. Not all the time, but often.

Q. When you left the meeting in Houston, did you call—  
you said you called Bell?

A. Yes.

Q. All right. Is one of the things that you did when you talked to Bell four days earlier or actually the day or a month before this Telex was to make arrangements for Mr. De Los Rios to come up?

A. No. I don't think so, no.

Q. If you can turn with me to a letter I believe you wrote on October 24th of 1974 to Colonel D. Rhodes at Bell Helicopter in Fort Worth. Is that the letter that you wrote?

A. Yes.

Q. In that letter, and I will read it quickly for the Court:

"Our mutual friend, Boris De La Piedra, the Bell representative in Peru, is sending you a 'letter of intent' for the purchase of two (2) Bell 205 A-1 helicopters, for the company we are forming between a group of distinguished Peruvians and Helicol. This letter, in addition to the purpose of greeting you, is also to confirm Helicol's participation in the above mentioned project."

Signed Helicol, by yourself.

[122] A. Yes, it's a good translation, yes.

Q. Is this about within three weeks of your meeting in Houston, does the formation of that company have anything to do with the Williams-Sedco-Horn contract?

A. No.

Q. It's just another deal you had?

A. Yes.

Q. Now, I ask you to turn to a Telex to Bell from yourself on December 4th that states:

"In order to act on creation of Peruvian company and obtain contract, we urgently need confirmation soon as possible delivery date on orders being placed by De La Piedra. Regards."

Signed by yourself.

Is this another contract you had in Peru?

A. Maybe so, yes.

Q. What other contract did you have in Peru?

A. We worked for Occidental Petroleum, Atlantic-Richfield.

[123] Q. On October 19, 1974, there is another telegram to Bell that states:

"Operations seriously affected by lack of chains. We have obligations contracted with oil companies and cannot non-comply. Please ship immediately balance."

MR. GOFORTH: I think that says cannot non-comply.

MR. GRAHAM: Cannot non-reply.

Q. (By Mr. Graham) "Please ship immediately." Signed yourself. Does that have anything to do with this contract?

A. Maybe so, yes. I don't know. I don't know, was the failure on the chains that moved the cable of the helicopter. Maybe it's a possibility that has something to do with the helicopter that we was flying for Williams, but I don't know. Maybe not, because this is October 19th.

Q. There is also a Telex in here trying to lease the 214 December 18th of 1975.

Now, that did have to do with this contract with Williams-Sedco-Horn? That is dated December 18, 1975, asking about leasing a 214. That does have something to do with this contract?

[124] A. Yes.

Q. All right. During the time that you were working for Williams-Sedco-Horn, you were sending Telexes and letters, I assume telephone calls, to Fort Worth trying to locate a 214 helicopter?

A. Yes.

Q. There is one other letter in here, sir, it's dated a little bit later, talking about efforts to set Helicol up as the designated Bell repair facility for South America. Do you recall a transaction like that that Helicol was trying to get itself recognized as the designated repair shop for South America for Bell Helicopters?

A. For Colombia, yes.

Q. That had been something you had been negotiating back and forth with Bell for a number of years?

A. Not directly with Bell. We have a representative in Colombia.

Q. Had you contacted Fort Worth about that?

[125] A. Yes.

Q. I want to ask you, sir, about some answers to interrogatories.

Let me ask you a little more about your relationship with Bell Helicopter. All of your equipment, all of your helicopters are Bell equipment?

A. Mostly, yes.

Q. All of your pilots are trained in Fort Worth?

A. No.

Q. How many of your pilots are trained in Fort Worth?

A. Some and when we buy some new equipment, they train the pilots at the factory. Otherwise we train in our own facility in Colombia.

Q. What about maintenance people, are they trained by Bell, too?

A. Some of them, yes.

Q. Of all of the training that your pilots and maintenance people get from Bell, they get in Fort Worth, Texas?

A. Some of it, because Bell has some groups traveling around and they are representatives Bell's in South America, Colombia, to train all the people.

[126] Q. When we were talking about sending Helicol people back and forth between Bogota and Fort Worth, they were going up to see Bell for training?

A. Will you clarify the question, please?

Q. Let me ask it another way:

As a businessman, isn't one of your strong selling points, you understand me, about when you go into make a contract with an oil company, isn't it one of your selling points the fact that you use Bell equipment and you have factory trained pilots and factory trained maintenance people?

A. No. As a sales—no. No. We use any helicopter the client wants to use. Well, we are not mates, we are not like married with Bell.

Q. It doesn't hurt your business, though?

A. No. No, not at all. I am very pleased with the Bell equipment. But we will be able to operate any other type helicopter.

Q. It's true when you go to negotiate your deal with oil companies, you are very happy to tell them you have American trained pilots?

[127] A. We have our own training facility and our pilots are very well known within the American and European companies.

Q. I want to show you some answers to interrogatories.

What I am referring to specifically, we have asked you some interrogatories about the amount of money that you paid Bell over the last—since 1970.

And this is Interrogatory 9.

THE COURT: Unless it's—you really need it for some specific question for this witness, maybe you ought to read it into the record, if you need to lay a predicate, go ahead.

MR. GRAHAM: What I am getting at, Your Honor, is the numbers in the answer are substantially less than the answer we got from Bell when we asked the same questions. I would like him to explain the discrepancy, if he knows.

[128] Q. (By Mr. Graham) Your company was asked written questions. We asked them.

How much business was done every year with Bell Helicopters and your company.

And your lawyer has prepared a written answer to that.

Do you have any personal knowledge of the preparation or how those answers were prepared?

A. No.

Q. My question was going to be, the answers we got from Bell when we asked the same question, we got a substantially higher number.

Do you have any explanation for that?

A. This is the first time I see this statement.

Maybe some discrepancy, because there are several items that we buy from—we send a bill to Bell and some other manufacturer send it down. They direct the purchase to some other manufacturers. I am guessing. I'm not sure, but I don't know what the discrepancies are.

[129] Q. Would it surprise you to learn that the—can you tell us during the life of the contract in 1976 and '76 the approximate amount in dollars of your purchases from Bell?

A. This is difficult to say, but I guess for spare parts around \$50,000 a month, something like that.

Q. Would it surprise you to learn for the years 1975 and 1976 that Bell records reflect sales to Helicol in excess of \$1,120,000?

A. Maybe so, yes, including equipment. Yes, I may say, in spare parts around fifty thousand a month in spare parts and besides the equipment that we are buying, yes, sir.

Q. Roughly averages about a \$100,000 a month?

A. Maybe so, including the new helicopters. Yes.

\* \* \*

[130] Q. Mr. Restrepo, also in the answers to interrogatories we asked your lawyers to tell us the names of Helicol people who were in the State of Texas during the last, I believe, five or six years. Your name is listed in the answer to interrogatories, that you were here December 11, 1975; September 12, 1973; and April 5, 1971, each time doing business with Bell Helicopters.

A. Buying equipment, yes.

Q. Did you talk to somebody about how to answer that interrogatory, did somebody ask you when you were in Texas so they could make this answer?

A. No. This is the first mention I hear of it. Maybe I have the record in the company. I don't know.

[131] Q. My problem is that the answers about the number of times you were in Texas leaves out the meeting with Williams-Sedco-Horn. It's just not here. It happened in October of 1974. Do you have an explanation for why that meeting is left out when it got you here on three other dates?

A. No. Can you explain the question?

Q. We asked your company to tell us the dates its representatives were in Texas and they told us three different dates.

A. Who is "they"?

Q. Whoever prepared the answers on behalf of your company to our interrogatories. They do not list the meeting that you had with Williams-Sedco-Horn on October 4, 1974.

A. How was the question to the company?

Q. The question was from January 31, 1970, through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas and with regard to each please state the following, date, name and address of individual, reason for visit.

And part of the answer says Francisco Artego Restrepo, with your address, December 11, 1975; September 12, 1973; April 5, 1971, each time with business with Bell Helicopter.

And I want to know why in the answers to interrogatories we were not told about your trip to Houston and the meeting with Williams-Sedco-Horn.

[132] A. I don't know. Officially I was invited to come to Tulsa. Maybe it's not in the records.

Q. Do you know who prepared the record?

A. Jorge Gonzalez.

\* \* \*

[133] Q. Can you tell me what kind of training your people got at Bell, were they given training to become instructors for helicopter pilots so they could come back to Colombia and teach other people how to fly helicopters?

A. Most of our pilots come from the Colombian Air Force and they provide very good training, mostly in Bell equipment. So it's not a need to send the pilots out here and we specialize in some of our services that the factory cannot teach us how to do it, besides the general information. So we have our own instructors and we train our own people there. As soon as we buy a new equipment, we have the right to fly the helicopter for

some time and receive some instructions. This is part of the deal when you buy helicopters.

Q. Is that included in the purchase price of the helicopter?

A. Yes.

Q. But you also paid Bell for additional training?

[134] A. Not in pilots, for mechanics maybe. So all the major components, things like that.

Q. Do you pick up your helicopters at Fort Worth at Bell?

A. Yes.

Q. Do your pilots fly up here to Fort Worth, then fly the helicopter back?

A. Yes.

\* \* \*

MR. PLETCHER (COUNSEL FOR RESPONDENTS)

[134] Q. What I want to be sure about is that we can rely upon the information that is already before the Court in the form of written questions to your company.

For example, there is a list of some thirty-three business trips to the State of Texas that did not include your trip here to secure the contract.

Now, do you know of any other business trips that Helicor people made to Texas for any reason at all, other than those answered in the written questions?

[135] A. I don't know. I may say everything is there. Maybe it's some discrepancies.

Q. So far as you can tell us, as the general manager of that company, we can rely upon those answers.

A. Yes, sir, of course.

Q. All right. With reference to the provision that Helicor was supposed to carry during the existence of the Williams-Sedco-Horn contract, that you were supposed to carry and you agreed to maintain the insurance policies which at present protects its own civil responsibilities in conformity with the terms and conditions and stipulations of such policies to those which the parties remit and that included four million dollars of insurance in the United States dollars for bodily injury to third party passengers and damage to third parties.

Now, is there such an insurance policy?

[136] A. Yes.

Q. Is it here in this courtroom, to your knowledge, that is, do any of your representatives have that policy?

A. I don't know.

Q. But that policy does exist and it does provide in accordance with the contact what it's supposed to?

A. Yes.

Q. Can you tell us what company wrote that policy?

A. Compania Sebulas.

Q. That company provides for four million dollars in United States dollars?

A. Yes.

Q. And that policy is available to us and you will make it available?

A. Yes, I think so.

Q. I want to know if you agree, we already have the Court telling your lawyer to give it to us, but we don't have it, but you as the general manager of the company will do so?

[137] A. Yes.

Q. Okay. Now, will you tell us, and I am nearly through, tell us, please, sir, what percentage of the equipment of Helicol is secured from Bell Helicopter in Fort Worth, Texas?

A. What is the meaning of secured?

Q. Sir, something bought or contracted for with Bell, I'm trying to find out what percentage of your fleet is Bell Helicopter.

A. Almost ninety percent.

Q. Ninety percent of it comes from Fort Worth, Texas?

A. Ninety percent comes from Bell. We bought some equipment from Augusta Bell, which is a European built helicopter.

Q. A Bell?

A. It's through the—it's Augusta Bell, built by Italian firm, the name Augusta and we have some Sigorskis.

Q. Is it accurate that ninety percent of the helicopter fleet is Bell Helicopter equipment?

[138] A. I may say so, yes.

Q. Is it accurate that that fleet is maintained through purchases from Bell Helicopter Company in Fort Worth?

A. Yes, through their representative in Colombia, of course.

Q. I understand that, but you get them out of Fort Worth, you buy them up in Fort Worth, is that correct?

A. Yes.

Q. That is where your contracts with Bell are made and executed are in Fort Worth, Texas?

A. We sign a purchase order. We don't have any contracts with Bell.

Q. The only contact you have had with Bell is buying equipment and buying parts and paying them in excess of four million dollars in the past six years?

MR. GOFORTH: I object. He thinks everything was bought and paid directly at Fort Worth and that is not the case, it's not the testimony.

Q. (By Mr. Pletcher) Let's find out about that, if they're still squabbling over it.

Do you dispute that four million dollars' worth of payments were made to Bell Helicopter Company in Fort Worth, Texas, from 1970 through 1977?

[139] A. What is dispute?

Q. I'll repeat it. Do you deny—do you understand deny? Agree?

Are you in accord with this statement, that Helicol paid to Bell Helicopter in Fort Worth, Texas, four million dollars, more or less, from 1970 to 1977?

A. This is a possibility, yes.

Q. You say it's a possibility?

A. I mean I don't know exactly the figure.

Q. You would accept the official records of the Bell Helicopter Compay in Fort Worth, Texas, would you not?

A. If I had the chance to see it, yes.

\* \* \*

[Testimony of Robert Greenough]

MR. KUYKENDAHL (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[143] Q. What is your name, sir?

A. Robert Greenough.

Q. What is your address?

A. 5425 South Gillette, Tulsa, Oklahoma.

Q. How are you presently employed?

A. I am employed by Williams International Services as a manager of the department that controls cost progress and forecasting.

Q. Were you with Williams International in October and November of 1974?

A. Yes, sir.

Q. What capacity did you have with Williams International at that time?

[144] A. At that time I was cost and progress and also estimating.

Q. Did you have anything to do with the Williams-Sedco joint venture?

A. I was not directly employed by the joint venture. My function there was as Williams representative, to track the project, as far as the costs and progress on the job.

Q. What project are we talking about? Just briefly describe to the court what Williams-Sedco-Horn were doing in Peru.

A. Petro-Peru, the national oil company, put out to International a tender for the construction of a pipeline from the producing field in the Amazon Jungle across the Andes to the Pacific Ocean at a proposed port called Baivor. The whole line was approximately 850 kilometers.

The bid documents split the line into four construction sections, which were to be bid separately. Williams did submit individual bids on each individual section.

Q. Did any of the other parties submit bids on each individual section?

A. To my best recollection there were four international contractors—no, five, one of which was not responsive to all sections. Four ended up submitting bids on all four sections.

[145] Q. Did Horn and/or Sedco submit bids on four sections?

A. Yes, individually.

Q. All right. Who won out in the bidding contest?

A. There was no individual winner, as far as Petro-Peru was concerned. After the bids were submitted, they were requested that certain of the bids be resubmitted in a joint bid, because they were concerned that they needed a large enough organization to construct this with a large enough backing and did not feel each individual one had sufficient backing so they were requested, all of them, to get together and submit a single bid.

Q. Had Williams-Sedco-Horn had a joint venture before that you know of?

A. Not those three partners. Horn, being a subsidiary of Brown & Root, we have worked with Brown & Root previously in Iran.

[146] Q. What was the reason that Williams-Sedco-Horn got together on this, was it a voluntary commitment by the parties or was there some—

A. It was at the request of Petro-Peru.

Q. Would the contract have been granted to any individual party?

A. No.

Q. It had to be a joint deal?

A. Yes.

Q. All right. Did you go down to Peru yourself during the time of these negotiations?

A. Yes, sir.

Q. What was your function in Peru?

A. To assist as necessary in the technical language of the contract, re-visioning estimates if quantity of work changed, advice to the chief negotiators.

\* \* \*

[149] Q. Would it be accurate that in the latter part of September, Williams started looking for helicopters?

A. Yes.

Q. Did you contract Helicol yourself?

[150] A. Not personally, no.

Q. Do you know who from Williams International or Williams-Sedco-Horn did contact Helicol?

A. Mr. Littlejohn, who at that time was our president.

Q. What function did Mr. Littlejohn have in the overall joint venture?

A. He was the chairman of the management committee.

Q. Who was on the management committee besides Mr. Littlejohn?

A. From Horn-Brown & Root, was Delbert Ward; Mr. William Bouvier from Houston contracting for Sedco.

\* \* \*

[151] Q. But, as I understand from Mr. Restrepo, and from your testimony, Williams had been involved in some type of venture with Helicol in Colombia?

A. Oh, Helicol?

Q. Yes.

A. Yes, Williams has on at least two previous occasions used them.

Q. All right. What had been Williams' experience with Helicol?

[152] A. Our prior experience had been very good.

Q. Did you have any conversations with Mr. Littlejohn concerning the helicopter prior to the time Mr. Restrepo came to Tulsa?

A. We had discussed the fact that we would need helicopters and from our previous experience with Helicol, Mr. Littlejohn indicated that he would recommend them to the other members of the joint venture.

Q. Did Mr. Littlejohn ever indicate to you prior to Mr. Restrepo coming to Tulsa that he agreed with Mr. Restrepo to give him a contract?

A. Not to my knowledge.

Q. Did Mr. Littlejohn have any authority to enter into a contract with Mr. Restrepo on behalf of the joint venture?

A. No, sir.

\* \* \*

[154] Q. With regard to entering into a contract with the helicopter operator, what was the limits of your authority in accordance with the contract?

A. The way I would read that would be \$100,000.

Q. Did the contract with Helicol—was it anticipated to exceed \$100,000?

[155] A. Yes.

Q. Did Mr. Littlejohn and you consider it necessary to have a meeting with the joint partners in order to obtain their agreement?

A. Yes, that would have to be done.

Q. Could a contract be made before that agreement was obtained?

A. No.

\* \* \*

[158] Q. All right. Now, did Mr. Restrepo subsequently arrive at your office or Williams' office in Tulsa?

A. Yes.

Q. Was there a meeting held in the Williams office in Tulsa?

A. Yes, sir.

Q. Who was present at the meeting with Mr. Restrepo?

A. Mr. Littlejohn, Dentez and one other person I cannot remember who it was.

Q. What was discussed at that meeting?

A. The general requirements of helicopter service.

Q. What was the date of that meeting?

A. I believe it was the 2nd of October. It ws the 2nd or 3rd of October.

Q. 1974?

A. Yes, sir.

Q. Did Mr. Restrepo make any calculations at the meeting?

[159] A. Yes, sir. He worked out what approximate prices would be.

Q. Were any representations made to Mr. Restrepo that he had a deal at that meeting?

A. No, sir.

Q. Was Mr. Restrepo informed he had to come to Houston at that meeting?

A. Yes, sir.

Q. Was he told why he had to come to Houston?

A. Yes, sir.

Q. What was he told?

A. That this is a joint venture contract and that we as Williams could not unilaterally make the contract with him.

Q. Now, the meeting in Houston was October 3rd or 4th of '74, I believe on Friday, right?

A. Yes, sir.

Q. In preparation for the meeting in Houston, did you prepare a agenda for that meeting?

A. Yes, sir.

Q. I show you a copy which you brought from Tulsa. Would you identify this, please?

A. Yes. This is a Xerox copy with some notes of the agenda that was prepared for that meeting.

[160] Q. Did you obtain this from your file in Tulsa yesterday?

A. Yes, sir.

(The instrument referred to was marked Greenough No. 2 for identification.)

Q. (By Mr. Kuykendahl) When was the agenda prepared and where?

A. It was prepared in Tulsa within the three or four days prior to that meeting, based upon prior discussions and various things that we knew we had discussed.

Q. This agenda is not limited just to helicopter items, is it?

A. No, sir, it covers a broad spectrum.

Q. Did you attend the meeting in Houston?

A. Yes, sir.

Q. How did you arrive in Houston?

A. We flew down on the Williams Company corporate jet.

Q. Who was in company with you?

A. Mr. Littlejohn, Mr. DePrize, Mr. Marvin Jones, I believe Mr. Duffy, Mr. Thompson, Mr. Restrepo and two other guests.

[161] Q. Where was the meeting in Houston held?

A. It was held in the board room of Houston Contracting Company on Buffalo Speedway.

Q. Now, the agenda indicates the meeting at the Brown & Root office. Was there a change?

A. Yes, sir. That was the original meeting location, but it was more convenient to use the Houston offices.

Q. What relationship does Houston Contracting have to the joint venture?

A. They are a subsidiary, as far as I know, of Sedco, who was the signor of the contract.

Houston Contracting is their construction division.

Q. At the meeting with Mr. Littlejohn representing Williams—

A. Yes, sir.

Q. —yourself and Mr. DePrize, I assume?

A. And Mr. Thompson from personnel. I believe Mr. Duffy was there also.

Q. Mr. Ward and Mr. Tallichet from Brown & Root?

A. Yes, sir.

Q. Who was from Sedco?

[162] A. William Brillier, E. J. Laboard, a man by the name of Noel Lott, who was to be one of the superintendents. I'm not sure which company he was with originally.

Q. Mr. Greenough, I would like to refer you to your agenda and ask you to note that there is certain items typed in and there is certain pencil writings. Could you explain the distinction or the difference?

A. The typed items were the items that would come up for discussion. The penciled items, I cannot identify the handwriting with pencil notations made during the meeting.

Q. And on item No. 3 concerning aircraft requirements, there is pencil notations. Would you read to the Court what that says?

A. Do you want me to read the typed and the pencil?

Q. Well, if you would.

A. "Requirements" typed. "Two or three twin Otters on floats". In pencil the number 2 is circled and indicated okay.

The next line is "Four helicopters, 204, 205, 212 size range."

Beneath that in pencil is 1-206 for Section 1, half price, 1200 pound hook, and I believe it says \$220 per hour.

Also one 205 for Section 2 to start 4600 pound hook.

Underneath that 1-205, 28 October; 1-206, 1 January; 1-205, May.

[163] Q. Thank you, sir. What does the notation mean 1-205, 28 October?

A. That indicates the aircraft will be necessary for the survey work.

Q. Was this discussed with Mr. Restrepo in the meeting?

A. Yes, sir.

Q. Did Mr. Restrepo agree in the meeting to provide one 205 by October 28, 1974?

A. Yes.

Q. Was that 205 to be on location?

A. That was the understanding, it would be available for work by then.

Q. Was that 205 to be used in connection with survey?

A. Yes, sir. \_\_\_\_\_

Q. It was necessary to do the survey within that thirty day period you have talked about?

A. We had to start, yes.

[164] Q. All right. At this meeting did Mr. Restrepo give you figures and calculations concerning his prices?

A. Yes, sir. One of the notations on there at \$220 an hour would have come from him.

Q. All right. Now, generally what happened in the meeting, what happened, just describe generally what happened in the meeting and Mr. Restrepo's participation in the meeting.

A. For the part that concerned the helicopters, there was discussion as to how many would be required, for what time, what type of service they would be in. And, of course, we were concerned as to the availability and the price.

Q. Was Mr. Restrepo dismissed from the meeting at any time?

A. After he had presented what he would have available and his prices, yes.

Q. Was there any discussion concerning whether this bid should be accepted?

A. After he left the room, yes.

Q. What was the discussion in that regard?

A. The Sedco and Horn personnel had had no previous experience with Helicol. Their previous experience had been primarily PHI, Petroleum Helicopters, so they asked us, Williams, what our previous experience was, how we rated him and so forth.

[165] Q. Was there any mention made of using anyone else, any other helicopter operator?

A. Yes. They had, the Sedco and Horn people had, as far as I know, had discussions with PHI on rates.

Q. Was there any mention about compatibility on facilities as prices?

A. I don't have a recollection of the exact comparison.

Q. What was the result, what happened as a result of the meeting while Mr. Restrepo was out of the room?

A. It was agreed we would let him have the contract.

Q. All right. Now, when you say "we would let him have the contract"—

A. We being the whole consortium.

Q. Was that put to a vote or was it necessary to vote?

A. I believe it was just a voice acceptance.

Q. And the representative of each one of the members accepted Helicol?

[166] A. Yes, sir.

Q. What happened after that meeting or that agreement, did Mr. Restrepo come back in the room?

A. Yes, sir.

Q. What was the conversation when he was back in the room?

A. Essentially to get moving.

Q. Why do you say get moving?

A. Because of the urgency of providing a helicopter just as soon as possible.

Q. Is this in connection with the survey you have been talking about?

A. Yes, sir.

Q. Did Mr. Restrepo remain in the meeting for the other items of discussion or did he leave?

A. No, he left at that time. There was no further requirements for him to be there. There were other subjects to be discussed.

\* \* \*

MR. GOFORTH (COUNSEL FOR HELICOL)

[168] Q. Williams was going to run this show down there in South America, basically, weren't they?

A. Essentially of the three we were the single manager, anything that required a major decision was by the majority of the three committee. The day to day operation was essentially by people that were supplied by Williams.

[169] Q. All right. I guess Mr. Novak, being one of those — and he is probably going to testify by deposition in a little while?

A. Yes, sir.

Q. He was general manager, is that right?

A. He was general manager of the Houston office and then he moved down to Peru and was named as president of the joint venture to supervise all the operations in Peru.

\* \* \*

[170] Q. And I guess as president Mr. Novak handled all the day to day operations down there in Lima?

A. He supervised the overall project, the day to day field operations under the direction of the various field superintendents.

Q. I guess they reported ultimately to him?

A. Yes, sir.

[171] Q. So to put it as clearly as possible, all the day to day operations of building this pipeline were handled out of the Lima office with Mr. Novak as president of the joint venture?

A. The day to day field construction, yes, sir.

Q. And I suppose any dealings that there were with Helicol were handled out of that Lima office also?

A. As far as day to day operations and submission of invoices.

Q. Yes, sir. Do you know any operations, be they the most important thing to the whole plant or the whole business, that might have been handled outside of the Lima office in connection with Helicol?

A. The only thing would be the payment of the bills.

Q. All right. But they were even invoiced in Lima, weren't they?

A. Yes.

\* \* \*

[177] Q. You say that Mr. Restrepo quoted you some figures for the helicopter service?

A. Yes.

Q. Then I think you said, and correct me if I'm wrong, that after he quoted you the figures for your required helicopter service, that he was asked to leave the room and then there was a discussion of the quotes?

A. At some time. I don't remember exactly where in the discussion the prices came up, but after we had had our discussions as far as prices, availability, working conditions, more or less who did what as far as supplies of fuel, housing, it was then that he was asked to leave so we could discuss it in private.

Q. That is when you say that you made the final decision to use Helicol?

A. Yes, sir.

Q. Was Mr. Restrepo informed at that time that there was going to be a discussion of whether or not he was going to be used and afterward that he—that the contract was going to be entered into?

[178] A. The reason for his leaving was so that we could discuss it. Then when it was decided he was called back in.

Q. Yes, sir. But even that was your reason, do you have any reason to believe that he knew that?

A. I could only surmise.

\* \* \*

[179] Q. When he came back in, no contract was signed or executed?

A. No, sir.

Q. In fact, that wasn't done until November down in Peru?

A. That is correct.

Q. In fact, at the time that he left, there was still lots of things that had to be worked out, I assume, on both sides?

A. I would assume so.

\* \* \*

[181] Q. At the time of this meeting, did you know on your own whether or not Mr. Restrepo had in fact the authority to bind Helicol one way or the other to—

A. No, sir, I did not know for a fact.

Q. The fact is he might not have been able to at all, to bind Helicol?

A. I would not know, personally.

\* \* \*

[Testimony of Edward Tallichet]

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[185] Q. What is your full name, please, sir?

A. Edward Lacy Tallichet.

Q. What do you do for a living?

A. I work as an engineer for Brown & Root.

Q. What position for Brown & Root?

A. Senior Vice-President, Pipeline Division.

Q. How long have you been with Brown & Root?

A. Seventeen years.

Q. Mr. Tallichet, we're here to talk about a pipeline construction job done by Williams-Sedco-Horn in Peru in 1975 and 1976.

Would you tell us what Brown & Root's involvement with that project was?

[186] A. Brown & Root was the owner of Horn International Construction Company, which was a one-third, approximately one-third partner of the joint venture of Williams-Sedco and Horn.

\* \* \*

[191] Q. How did you first— we all know Helicol, the Colombian company, flew the helicopters on the job. Can you tell us how they became involved?

A. Well, George Littlejohn had nominated a man named Riga as a general manager to run the job as general manager for all three partners. He would be actively living in Peru. Well, Riga had run the—or worked on the Trans-Ecuadorian Pipeline and he and Littlejohn had used Helicol on that job. That was a lot of experience that they had had with the Helicol Company and they felt like they could handle the job as subcontractor and suggested this to the management committee.

[192] Q. What was the management committee told, were they told that Williams had gone ahead and subcontracted the helicopters or this was a proposal Williams was making?

A. No. The original thing was one of the earlier management meetings it was that the helicopters were getting, the ones we were planning on buying, were becoming very difficult to find. Mr. Littlejohn made the recommendation to the management committee that we subcontract these helicopters. He suggested Helicol would be the one we should subcontract with.

Brillier and Delbert Dorman and myself, who were members of the committee, asked him to go to this subcontractor and see what he could get them for, see if they could actually pick up the machines. Like I say, they were becoming very short in supply, see if he could put together some kind of subcontract we as a management committee, could vote on really to see just exactly what kind of deal he could put together for us.

[193] Q. At that stage was Mr. Littlejohn authorized by the managers of the joint venture to enter into a contract?

A. No. We asked him to look into and get all the background on this Helicol. The fact that he had worked with them before left a little bit of a—well, it was one of those things that you could make a deal on, a pay-off or whatever you want to call it. We didn't feel comfortable, you could pick up somebody for two, three million dollar job off the streets.

The partners—we had never met Helicol, we didn't know who they were, what they could do. We asked him to find out what they could furnish us and bring him to a meeting and let all the members of the management committee meet him face to face.

We kind of put an agenda together, questions we were going to ask this Helicol Company at a management meeting. Mr. Littlejohn was to call him in, bring him before us and answer these questions so we could be sure it was aboveboard contract.

[194] Q. When you say "him", you're talking about Helicol?

A. Helicol. Helicol at that time, I didn't know who they were.

\* \* \*

[195] Q. Before we get into the notes, where did the copy of the agenda come from that you have?

A. The original of this came out of my files at Brown & Root.

Q. Are you the custodian of that record?

[196] A. That's right.

Q. Let me ask you to read for the Court the handwritten notations on page 1 after aircraft.

A. It says Helicol, two Otters, (bought two 205's) committee to JV, stands for joint venture, available in fifteen days.

Q. The two Otters doesn't have anything to do with helicopters. That was another kind?

A. That was the two fixed-wing aircraft. At this particular meeting they instructed me to leave the meeting and go buy these two helicopters. This was the authorization we voted, the joint venture would buy the Otters and I was instructed to go purchase them and I did. It was why the word bought was put behind that.

Q. 205 Helicopters?

A. 205 Helicopters, that's correct.

Q. What does the notation available fifteen days mean?

A. That was what the Helicol representative was made to guarantee if we gave him the contract that he would furnish us the first helicopter in fifteen days. We had—the job had been pushed up to be done so fast we were trying to get some surveyors started to work. The only way to work in a jungle where we were, it was impossible, except by helicopter. You

could get a certain way by boat, but from that point, probably fifteen miles into the jungle, had to be done by helicopter. He promised within fifteen days he would have a 205.

[197] Q. How much is fifteen days from October 3rd? Let me get you to do some arithmetic for me. The meeting happened on October 3rd. You were promised the helicopters in fifteen days?

A. That's right, by the 18th.

Q. Of October

A. Of October.

Q. Let me get you to turn to page 6 under the section Aircraft, and ask if you can read the handwritten note where it says decided on one 205. If you will read that whole note for us.

A. The note says decided on one 205 on 10-28-74 at \$13,900, plus 120 hours at \$185 an hour for 120 hours. Over 120 hours, \$450 an hour.

We have an option on a second 205 available 5-1-75, availability and rate for 206 to be derived from Air Force.

[198] Q. What is the significance of that handwritten notation, what do the numbers mean?

A. This was—we called in the Helicol manager and asked him. He read these numbers off as to mean what the helicopters were going to cost the joint venture and the dates are the dates he promised us that he'd have machines for us, which were very critical to the job and probably the most important thing that we had.

Q. Are the rates noted in the pencil notations on page 6 the same rates that are in the contract between Williams-Sedco-Horn and Helicol?

A. Well, yes, what we actually did. The Helicol manager proposed these rates, he came before us and answered numerous questions that we asked him about his helicopters.

Q. Let me stop you. How long was he before you answering numerous questions?

[199] A. He must have been before the committee an hour-and-a-half, an hour to an hour-and-a-half. We called George Littlejohn, brought him to the meeting.

Q. When you say "he" are we talking about Mr. Restrepo, the general manager?

A. I don't recall his name. I know his name was Paco. I don't remember his last name. He was a Latin-American, he was the manager for Helicol.

Mr. Littlejohn brought Paco to the joint venture meeting, as we had invited him to do and he sat outside while we conducted several items of business.

And then Mr. Littlejohn called him and introduced him to the entire committee and we started asking these questions and from that, these numbers came out and these were read to us by Paco and after he answered the questions and particularly we dwelled possibly on delivery dates, he was asked to leave the room.

We had some internal discussion about the prices. Everybody was satisfied with those. Everybody was satisfied the man said he could deliver them and he could and he promised that first one and we had a management vote and voted at that time to accept this proposition from Paco.

[200] Q. What happened next, was he brought back into the room?

A. He was brought back in the room and told we had voted in the affirmative. I say "we", the management committee had voted in the affirmative. He was to immediately start to get the helicopter, the first one mobilized and make the deal on the second one so it could be sent on schedule.

Q. I note on page 6 there is a handwritten single word after the typed helicopters—it charter from Helicol. What is that single word?

A. Posco.

Q. What does that mean?

A. That was the name of the—I think his name was Paco. Walter wrote it Posco. I don't remember hearing the man's last name.

Q. Let me ask you this: Would the joint venture have entered into the contract with Helicol had the meeting not occurred in Houston or had there not been a meeting like the one occurred in Houston where Helicol came in face to face and talked to the board?

[201] A. No way. We had to be sure that we can get that first helicopter, because we had committed to the Peruvians the job would start by a certain date. To get it started by a certain date, we had started mobilizing probably \$50,000,000 worth of equipment in Houston. By the time that equipment left Houston and got to the Peruvian jungles, we had to have that survey a certain distance ahead of us. We had committed ourselves to start this job by a certain date and this particular point was very, very important it come to pass.

\* \* \*

[208] Q. What I am saying, the actual place where you had this meeting really didn't have anything to do with the substance of the meeting?

A. Yes, it did. The joint venture, because two of the partners were domiciled in Houston, it was decided that the joint venture office would also be domiciled in Houston. So when we did have these management meetings, they were scheduled fairly regular, that the least number of people would have to get on airplanes and move.

Now, Mr. Littlejohn was merely—their business was nearly ninety-nine percent international, maybe a hundred percent international, and Mr. Littlejohn was constantly on the move, where Bill Brillier and other members of the Houston contractors' business were headquartered in Houston and most of

their business, most of my business in the Gulf of Mexico and Delbert Ward and we were close to our work here. So the management meetings and office was decided to be had in Houston because of the convenience of being in Houston because it was easier to work out of here.

[209] Q. It was basically for your convenience you'd have the meetings here?

A. That's right.

Q. It certainly didn't have anything to do with Mr. Restrepo's convenience or Paco?

A. No.

\* \* \*

MR. GOFORTH (COUNSEL FOR HELICOL)

[210] Q. Well, was the joint venture bound and obligated by the contract that was executed in Lima, Peru, between Helicol and Williams-Sedco-Horn?

A. I presume we were bound by it. We operated by it.

[211] Q. You lived by it on a day to day basis?

A. As far as I know.

Q. For all the time you were contracting.

Do you have any reason to believe that Mr. Restrepo or Paco was empowered to enter into a binding contract at the time he was up here or was he just up here agreeing to agree? You know, that's a pretty commonly used phrase.

A. No. The reason for meeting in—this meeting we had with Paco was to really feel him out to see if he could do the things he was telling us he could do face to face. We wanted Mr. Littlejohn to bring him face to face with us so the management committee could make a vote to buy the helicopters, lease the helicopters or rent the helicopters, to do whatever.

But the reason for that meeting was to vote on which way we were going to go, on a fixed-wing aircraft and on the helicop-

ters. Up to that meeting, the vote was taken to buy fixed-wing aircraft, which I personally did, and to make a contract with Paco for the helicopters, which we did. That was the sole reason for that vote, was to make it legal.

[212] Q. All right. I guess you found out during the meeting whether or not Mr. Restrepo had the right to go into Peru and operate in Peru, since it was a foreign country?

A. Well, he spelled out his entire background and it was very significant, his background, the man had—he told us jobs he had done, was willing to furnish all kinds of backup. He was with a very large company. I don't remember the airline company, but it's a significant airline company he is a part of. He told us his whole background personally, about the pilots, the machines he was going to use, the ages of them. It was a very, very thorough meeting.

\* \* \*

[215] Q. All right. So everything that was important to you was accomplished and agreed upon at that meeting?

A. That is correct.

Q. Everything that had any importance in the contract was agreed upon at that meeting?

A. The actual wording of the contract was not. The management committee probably—the management committee was supposed to be responsible for telling someone to go out and make a contract. This was actually performed by the managing partner, but he could not enter into a contract until the management committee voted on it, majority vote. Details were not the management committee's problem.

[216] Q. After you voted on it, he entered into the contract?

A. As far as I know.

Q. So the contract was not entered into at the time of the meeting, but it was after you voted on it allowing Mr. Littlejohn to enter into it?

A. As far as I know.

IN THE  
DISTRICT COURT HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

**No. 1,087,423**

**ELIZABETH HALL, et al.,**

v.

**WILLIAMS-SEDCO-HORN, A JOINT VENTURE, et al.**

**DEPOSITION ON WRITTEN INTERROGATORIES OF BEN  
JAMES BROWN, BELL HELICOPTER COMPANY, TAKEN  
BY WILLIAMS-SEDCO-HORN**

Date: January 12, 1978

ANSWERS AND DEPOSITION OF BEN JAMES BROWN, BELL HELICOPTER COMPANY, a witness for the Defendant, Williams-Sedco-Horn, to the accompanying direct interrogatories propounded to him in the above-styled and numbered cause, taken before Shirley I. Korenman, a Notary Public in Tarrant County, for the State of Texas, at the offices of Bell Helicopter Company, located at Highway 183 East, in the City of Fort Worth, County of Tarrant, State of Texas, at 3:00 o'clock, P.M., on the 12th day of January, A.D., 1978, in accordance with the accompanying Notice.

PRESENT: George Galerstein, Esq.

**BEN JAMES BROWN,**

the said witness, being duly sworn to testify the truth, the whole truth and nothing but the truth in answer to the direct interrogatories as hereinafter indicated, deposes and says as follows:

**DIRECT INTERROGATORIES**

No. 1. Did Bell Helicopter Company manufacture a helicopter described as follows: 1970 Bell 205A-1, Serial No. 30079, Registration No. HK570, equipped with Lycoming turbine

No. T53-13B, Serial No. LE-07229X? If so, please state the following:

ANSWER: Yes.

(a) To whom was this helicopter sold?

ANSWER: The aircraft was sold to Helicopteros Nacionales de Colombia, S.A., or an acronym, Helicol, of Bogota, Colombia.

(b) To whom was this helicopter delivered?

ANSWER: The helicopter was delivered in Fort Worth, Texas, to authorized representatives of Helicol.

(c) The date(s) of such sales and deliveries.

ANSWER: The date of the sale occurred on or about 19 March 1970, and the delivery was effected on 10 April 1970.

No. 2. With regard to your sale of the aforesaid helicopter, please attach to your answers copies of all sales instruments, bills of sale, title transfer documents, shipping receipts, et cetera, and with regard to these documents, please state the following:

ANSWER: We have copies for you.

(a) Were these documents maintained and kept in the regular course of the business of Bell Helicopter Company?

ANSWER: Yes.

(b) Were said documents made at or near the time of the transactions described therein?

ANSWER: Yes.

(c) Were said documents made by someone at Bell helicopter who had personal knowledge of the transactions reflected therein?

ANSWER: Yes.

No. 3. With regard to the sale of the aforesaid helicopter, please state all persons, officers, directors or employees, connected in any way with Helicopteros Nacionales de Colombia,

S.A. ("Helicol") with whom officials of Bell Helicopter Company negotiated, stating specifically the following:

ANSWER: For Helicol, it would be Mr. Francisco Restrepo, General Manager of Helicol, and Mr. Sabas Pretelt, who is the Executive Vice-President.

(a) The date(s) of all negotiations between Helicol and Bell concerning the sale of this helicopter.

ANSWER: The dates of negotiations between Helicol and Bell concerning the sale of this helicopter occurred during early March 1970.

(b) The places of all such negotiations.

ANSWER: The place of negotiations was in Fort Worth, Texas, at Bell Helicopter Company.

(c) Whether such negotiations were in person, by telephone, et cetera.

ANSWER: The negotiations were conducted in person and subsequently by telephone and telegram.

(d) Whether Bell has ever received written correspondence from Helicol concerning the sale of this helicopter. If so, please attach true and correct copies of all such correspondence to your answers.

ANSWER: Yes, and we have copies to be attached.

No. 4. From the period January 1, 1969, through the present, has Bell Helicopter Company ever sold any helicopters, parts or any merchandise whatsoever to Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please state the following:

ANSWER: Yes.

(a) The complete identify of all such helicopters or merchandise sold.

ANSWER: I would refer you, please, to a document that we will submit, "Helicol Sales 1970 through 1977," which in sum and substance will provide you with the data required.

(b) The dates of such sales.

ANSWER: By year, they are given in that document.

(c) The dollar amounts of such sales.

ANSWER: That is provided in the document.

(d) The point of delivery.

ANSWER: All sales are F.O.B. factory, Fort Worth, Texas.

(e) The dates and locations of all negotiations leading up to any such sales.

ANSWER: I'm sorry, that is not obtainable. We consider that an ongoing process which is performed in person, telegraphically, letters, and no record is kept.

(f) Please attach to your answers all correspondence between Bell Helicopter Company and Helicol dealing with such sales whether the correspondence occurs prior to the sale or subsequent thereto.

ANSWER: All the correspondence that we have been able to find is included within the items to be provided today.

No. 5. Have officials of Helicopteros Nacionales de Colombia, S.A. ("Helicol") ever met with officials of Bell Helicopter Company within the borders of the State of Texas?

ANSWER: Yes.

No. 6. Has Bell Helicopter Company ever received telephone calls from employees, representatives, officers or directors of Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please state the following:

ANSWER: Yes.

(a) The dates of such telephone calls.

ANSWER: No record or journal of such calls is maintained.

(b) Who received the telephone calls?

ANSWER: Primarily, Mr. D. E. Mitchell, the manager of International Marketing Administration, and Mr. R. J. Gonzales, Regional Sales Manager for Latin America.

(c) The general purpose of such telephone calls.

ANSWER: The general purpose of such calls is principally inquiries concerning aircraft or spare parts availability; otherwise, status of orders placed regarding delivery, payment, and so forth, and/or technical questions concerning the maintenance and operational parameters of the aircraft.

No. 7. Has Bell Helicopter Company ever received written correspondence from Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please attach copies of that correspondence to your answers.

ANSWER: Yes.

I have copies.

No. 8. Has Bell Helicopter Company ever received telegrams or telexes from Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please attach copies of such telegrams or telexes to your answers.

ANSWER: Yes.

I have copies.

No. 9. Who is the person at Bell Helicopter Company who is the most familiar with the sales of helicopters by Bell to Helicopteros Nacionales de Colombia, S.A. ("Helicol")?

ANSWER: Mr. D. E. Mitchell, Manager, International Marketing Administration, and Mr. R. J. Gonzales, Regional Sales Manager for Latin America.

---

Ben James Brown

STATE OF TEXAS  
COUNTY OF TARRANT

Subscribed and sworn to before me by the said witness,  
BEN JAMES BROWN, on this the \_\_\_\_ day of January, A.D.,  
1978.

---

Shirley I. Korenman, Notary Public in Tarrant County, for the  
State of Texas.

My Commission expires October 11, 1979.

Documents attached in Answer to Interrogatory No. 2

**PROMISSORY NOTE DATED APRIL 2, 1970**

\*\*

**PROMISSORY NOTE**

U.S. \$773,605.54

APRIL 2, 1970

FOR VALUE RECEIVED, HELICOL, S.A. hereby unconditionally promises to pay by this promissory note to the order of BELL HELICOPTER Co. at Bank of America, 37 Broad Street, New York, New York, the principal sum of Seven Hundred Seventy-Three Thousand six hundred and five 54/100 Dollars (\$773,605.54) in installments as hereinafter provided and to pay interest concurrently with each payment of principal at the rate of nine and one quarter per cent (9-1/4%) per annum, computed on a 360 day factor actual time elapsed basis, on the unpaid principal balance hereof from time to time outstanding.

The principal hereof shall be paid in ten (10) installments, the first of which shall be in the sum of Seventy-Seven Thousand, Three Hundred Sixty and Fifty-Nine Cents Dollars (\$77,360.59) and shall be due and payable on October 2, 1970. The remaining installments shall each be in the sum of Seventy-Seven Thousand Three Hundred Sixty and Fifty-Five Cents Dollars (\$77,360.55) and shall be due and payable semi-annually thereafter.

Both principal and interest of this promissory note are payable in lawful money of the United States of America without deduction for or on account of any present or future taxes, duties, or other charges levied or imposed on this note or the proceeds or holder hereof by the Government of COLOMBIA or any political subdivision or taxing authority thereof.

The right is reserved to prepay without penalty or premium, all or any part of the principal hereof on any principal payment

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\*\* Indicates information deleted due to illegibility or inability to reproduce.

date, any such prepayment to be applied to the remaining installments of principal in the inverse order of their maturities.

Upon default in the prompt and full payment of any installment of principal or interest on this promissory note, the entire unpaid principal hereof and interest thereon to the date of payment shall immediately become due and payable at the option and upon demand of the holder hereof.

The failure of the holder hereof to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance. In the event of commencement of suit to enforce payment of this note, said Corporation agrees to pay such additional sum as attorney fees as the court may adjudge reasonable.

/s/ FRANCISCO RESTREPO  
Francisco Restrepo  
General Manager

#### GUARANTEE

FOR VALUE RECEIVED, Aerovias Nacionales de Colombia, as primary obligor(s), hereby unconditionally guarantee(s) the prompt payment of principal and interest on the foregoing promissory note when and as due in accordance with its terms, and hereby waive diligence, demand, protest, or notice of any kind whatsoever, as well as any requirement that the holder exhaust any right or take any action against the maker of the foregoing promissory note and hereby consent(s) to any extension of time or renewal thereof.

/s/ SABAS PRETELT M.  
Sabas Pretelt M.  
Executive Vice-President

CERTIFICATE OF AIRWORTHINESS FORM FAA-26 (12-60)

\*\*

No. E 97538

**EXPORT CERTIFICATE OF AIRWORTHINESS**

THIS CERTIFIES that the product identified before and more particularly described in Specification(s)<sup>1</sup> of the Federal Aviation Agency, Numbered \*\*

has been examined and as of the date of this certificate, is considered airworthy in accordance with a comprehensive and detailed airworthiness code of the United States Government, and is in compliance with those special requirements of the importing country filed with the United States Government, except as noted below. This certificate in no way attests to compliance with any agreements or contracts between the vendor and purchaser, nor does it constitute authority to operate an aircraft.

Product.	Bell Helicopter		
Manufacturer	Bell Helicopter Company, Fort Worth, Texas		
	76101		
Model.	205A-1	Engine: LYCOMING	
		T53-13A	S/N: LE-07234
Serial No.	30079		
New <input checked="" type="checkbox"/> Newly Overhauled <input type="checkbox"/>			
Used Aircraft <input type="checkbox"/>			
Country to which exported. Colombia			
Exceptions			

/s/ L. T. Proctor  
 Signature of Authorized Representative  
9 April 1970  
 DATE

**BELL HELICOPTER COMPANY P.C. 100**  
**AGENCY REPRESENTED AND**  
**NUMBER**  
 \*\*  
**DISTRICT OFFICE OR DESIGNEE**  
**NUMBER**

For complete aircraft, list applicable specification or Type Certificate Data Sheet numbers for the aircraft, engine, and propeller. Applicable specifications or Type Certificate Data Sheet, if not attached to this export certificate, will have been forwarded to the appropriate Governmental office of the importing country.

\*\* Indicates information deleted due to illegibility or inability to reproduce.

BILL OF SALE DATED APRIL 10, 1970BILL OF SALE

\*\*

MICROFILM CODE

For and in consideration of \$10.00 + the undersigned owner(s) of the full legal and beneficial title of the aircraft described as follows: 1C JC

<u>MANUFACTURER'S SERIAL</u>	<u>NATIONALITY</u>
NUMBER	AND REGISTRATION MARKS
30079	Colombia HK-570

NAME AND ADDRESS

\*\*  
Helicopteros Nacionales de Colombia, S.A.  
Helicol  
Bogota, Colombia

\*\* and to its executors, administrators, and assigns to have and to hold singularly the said aircraft forever, and certifies that the same is not subject to any mortgage or other encumbrance except: \$796,500.00 April 2, 1970

<u>TYPE OF ENCUMBRANCE</u>	<u>DATED</u>
Promissory Note (Held by Bank of America-N.Y.) Two Aircraft 30079/HK570, 30080/HK571	

IN FAVOR OF

Bell Helicopter Company

In testimony whereof I have set my hand and seal this 10th day of APRIL 1970

NAME OF SELLER BELL HELICOPTER COMPANY, Division of Textron Inc.

BY (Sign in Ink) \*\*  
(If executed for co-ownership, all must sign)

TITLE AUTHORIZED REPRESENTATIVE

(If signed for a corporation, partnership, or agent)

A C K N O W L E D G M E N T

State of Texas County of Tarrant On this 10th day of April, 1970 before me personally appeared the above named seller, to me known to be the person described in and who executed the foregoing bill of sale, and acknowledged that he executed the same as his free act and deed, and, if said bill of sale be that of a corporation swore that he was authorized to execute same. Given under my hand and official seal the day and year written above. \*\*

Commission Expires June 1, 1971 NOTARY PUBLIC

\*\*Indicates information deleted due to illegibility or inability to reproduce

BELL HELICOPTER RECEIPT DATED 10 APRIL, 1970

\*\*

10 April 1970

R E C E I P T

RECEIVED FROM BELL HELICOPTER CO. IN  
GOOD ORDER ONE BELL HELICOPTER MODEL  
205A-1, SERIAL NUMBER 30079, REGISTRATION  
NUMBER HK-570, AND INSTALLED EQUIPMENT,  
CARGO SUSPENSION ASSEMBLY AND CARGO  
BUMPER, FLYAWAY FACTORY FORT WORTH,  
TEXAS APRIL 10, 1970

/s/ CAPTAIN RINCON  
HELICOPTEROS NACIONALES  
DE COLOMBIA, S.A.

\*\* Indicates information deleted due to illegibility or inability to  
reproduce.

Documents attached in Answer to Interrogatory No. 3(d)

TELEX DATED APRIL 28, 1970

BELL HCPTR FTW

VDDLLV1140A CDT APR 28 70 NSA179 AB137 \*\*

A TRA673 VIA TRT ZLH ZZB \*\*

WUZCZC RSA 140 MIBO148 FC55 LH

UTNX CO COBO 038

BOGOTACOL 38/36 28 1020 VIA TROPICAL

FRANK KING BELL HELICOPTER COMPANY

POST OFFICE BOX 482 FORT-WORTH-1-TEXAS \*\*

FAVOR ACREDITAR CUENTA HELICOL BANK OF AMERICA NEW YORK DOLARES 75.000.00 CARGO ANTONIO ANGEL Y CIA ACERDO SU MEMO 04-FRK-3301

MARZO 19.70 STOP CONFIRME

HELICOL BOLIVAR

CFM 482 DOLOARES 75.000.00 04-FRK-3301 19/70

Please credit Helicol account, Bank of America, New York \$75,000.00 Charge Antonio Angel Y Cia., in accordance with your Memo 04-FRK-3301, March 19/70. Confirm.

\*\* Indicates information deleted due to illegibility or inability to reproduce.

TELEX DATED MAY 12, 1970

1107P CDT MAY 12 70 NSA464 AA563

A TRA602 VIA TRT LWZ

\*\*

WUZCZC RSA010 MIB0193 FC86

UTNX HL COBO 031

\*\*

BOGOTACOL 31-29 12 1816

LT

BELLCRAFT POST OFFICE BOX 842

FORTWORTHTEX

RM-903 SALES DEPARTMENT ATTENTION KURT BADEN  
PLEASE SEND CS ASAP BILL OF SALE CORRESPONDING  
BELLS 205A1 S/N30079 AND 30080

\*\*

CONFIRM HELICOL

CASAS

CFM LT RM-903 205A1 S/N30079 30080

\*\* Indicates information deleted due to illegibility or inability to reproduce.

Document attached in Answer to Interrogatory No. 4(a)

HELICOL

SALES 1970 THRU 1977

	AM & Vendor										
	204/205 43 Spares	205 Spares	205 Spares	Misc.	Training	205 Ships	Access	204 Ships	Access	Total	
1970	\$ 37,823.18	\$ 54,460.52	\$	\$ *89.00	\$25,236.33	\$	\$790,000.00	\$6,500.00	\$	\$	\$22,***.13
1971	23,453.26	2*,83*.05		5,0*2.64	6,767.70						6*,108.65
1972	110,301.02	1**.8**.5	197.54	7,77*.45	5,003.**	2,350.00					2**.529.**
1973	67,524.55	184,***.3*	481.26	7,260.*2	7,839.*5		440,000.00	6,474.21	137,500.00	6,802.30	*5,650.**
1974	67,908.33	*69,446.56	57,301.55	26,***.**	4**.67	1,950.00	440,000.00				*6*,17*.**
1975	30,365.10	*37,195.70	33,863.78	41,4*5.*8	16,84*.92						969,7**.**
1976	37,009.71	51,***.06	31,949.88	42,*3*.7	10,233.52		615,000.00	5,200.00			1,*9*.58*.**
1977	100,606.60	***,2**.06	13,821.75	*2,***9.64	4,19*.**	1,800.00					666,***.61
TOTAL	\$474,990.75	\$2**2,253.49	\$137,615.76	\$191,2*8.0*	\$76,560.12	\$6,100.00	\$2,285,000.00	\$18,174.21	\$137,500.00	\$6,802.30	\$3,*76,227.68

\*Denotes material omitted due to illegibility.

135a

Document attached in Answer to Interrogatory No. 7

TRANSLATION OF LETTER DATED OCTOBER 24, 1974

HELICOL  
Bogota, Colombia

24 October 1974

HNC-G-604

Col. D. Rhodes  
Bell Helicopter  
P.O. Box 482  
Fort Worth, Texas 76101

Dear Dusty:

Our mutual friend, Boris de la Piedra, the Bell representative in Peru, is sending you a "letter of intent" for the purchase of two (2) Bell 205A-1 helicopters, for the company we are forming between a group of distinguished Peruvians and Helicol.

This letter, in addition to the purpose of greeting you, is also to confirm Helicol's participation in the above-mentioned project.

Cordially,

HELICOL, S.A.

/s/

Francisco Restrepo O.  
General Manager

\*\*

translation mh: 6639/10-31-74

\*\* Indicates information deleted due to illegibility or inability to reproduce.

Documents attached in Answer to Interrogatory No. 8

TELEX DATED JANUARY 25, 1974

P

BELCOPTERFTW

\*\*

V

\*\*

TLX1151/25

BELCOPTERFTW

BOGOTA ENERO 25 1974

\*\*

PAFEEPARA JORGE GONZALEZ

DOMINGO LLEGARAN ESA PLINIO DEL VALLE Y  
ANGEL LUQUETA ATENDER:

CURSO REPARACION COMPONENTES 206 PUNTO FAVOR  
RESERVAR HOTEL Y CONFIRMAR SALUDOS RESTREPO  
HELICOL

BELCOPTERFTW

Plinio Del Balle & Angel Luqueta will arrive Sunday to attend 206 Component Repair Course. Please reserve hotel and confirm. Regards. Restrepo, Helicol.

441225 \*\*

\*\* Indicates information deleted due to illegibility or inability to reproduce.

TELEX DATED APRIL 16, 1974  
BELCOPTERFTW

VIA WUI

\*\*

BELCOPTERFTW

\*\*

441225 HL CO  
BOGOTA APRIL 16 74

\*\*

PARA JORGE GONZALEZ

PARA HELICOPTEROS 204/205 S/N 2018/3001 and 30079 AOG  
AGRADEZCOTE GESTIONAR DESPACHO INMEDIATO 10EA  
205-040-176-3 BOOT PTO ULTIMO DESPACHO DE BELL FUE  
INSUFICIENTE PTO ESPERAMOS CONFIRMACION

FOR 204/205 HELICOPTERS  
S/N2018/3001 and 30079, AOG,  
PLEASE ARRANGE IM-  
MEDIATE SHIPMENT 10  
EACH 205-040-176-3 BOOT.  
LAST BILL SHIPMENT  
WAS INSUFFICIENT. EX-  
PECT CONFIRMATION.  
REGARDS,

SALUDOS RESTREPO  
HELICOL

BELCOPTERFTW

\*\* Indicates information deleted due to illegibility or inability to  
reproduce.

HELICOL REQUISITION FORM

\*\*

REQUISITION

TO: \_\_\_\_\_ VENDOR: \_\_\_\_\_

BELL HELICOPTER COMPANY SAME  
FORT WORTH, TEXAS 76101

PART TO BE USED FOR:

MODEL 205A-1

ITEM	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT	VALUE
					PRICE	
1	6	EA	204-011-250-001	BLADE ASSY, M.R	7.384.25	44.305

—CLOSED—

SPECIAL NOTE: THIS ORDER PER TELEGRAMS SA-741148  
DATED SPT. 24/74 AND BLCOL187 DATED  
SPT. 25/74

Each Requisition is to be limited to items of like nature	TOTAL U.S. \$44.305
---	---------------------

REMARKS OR SPECIAL INSTRUCTIONS:

UNITS TO BE SHIPPED TO HELICOL OPERATION  
AT PERU S.A. PER FURTHER INSTRUCTIONS.

PREPARED BY:	AUTHORIZED BY:	APPROVED BY:
**	**	**
SUPERINTENDANT OF		DIRECTOR OF
MATERIALS		MAINTENANCE

\*\* Indicates information deleted due to illegibility or inability to reproduce.

TELEX DATED NOVEMBER 5, 1974

VIA WUI +

BELL HC PTR FTW

44587 ANCL CO 13480 TELEX NO. 273 NOVEMBER 5/74 TIME  
12:30

GEORGE GONZALEZ

\*\*

HERNAN DE LOS RIOS FUNCIONARIO HELICOL LLEGARA  
ESA VIERNES 8.

HERNAN DE LOS RIOS, HELICOL OFFICER, WILL ARRIVE  
THERE FRIDAY THE EIGHTH.

SALUDOS

\*\*

ANTOCO/SOTO

+

BELL HC PTR FTW

44587 ANCL CO

\*\*Indicates information deleted due to illegibility or inability to  
reproduce.

141a

TELEX DATED DECEMBER 4, 1974

BELCOPTERFTW

\*\*

1302 EDT

441225 HL CO

\*\*

BOGOTA OCTUBRE 19/74

\*\*

PARA GEORGE GONZALEZ

OPERACION 204B/205-A1 SERIAMENTE AFECTADA POR  
FLATA CADENAS 205-001-721-001 PTO TENEMOS  
COMPROMISOS ADQUIRIDOS COMPAÑIAS PETROLERAS  
NO PODEMOS INCUMPLIR PTO AGRADEZCOTE DESPACHO  
INMEDIATO BALANCE PO BH-2261 Y BH-2266 PTO ESPERO  
RESPUESTA SALUDOS RESTREPO HELICOL

204B/205A-1 OPERATION SERIOUSLY AFFECTED  
BY LACK OF CHAINS 205-001-721-001. WE HAVE  
OBLIGATIONS CONTRACTED WITH OIL COM-  
PANIES AND CANNOT NON-COMPLY. PLEASE  
SHIP IMMEDIATELY BALANCE BH-2261 AND BH-  
2266. AWAIT REPLY. REGARDS. RESTREPO,  
HELICOL.

\*\*

BELCOPTERFTW

\*\* Indicates information deleted due to illegibility or inability to  
reproduce.

TELEX DATED DECEMBER 4, 1974

1505 EST

\*\*

441225 HL CO

BOGOTA DICIEMBRE 3/74

ATT:RHODES

\*\*

FIN ADELANTAR CONSTITUCION EMPRESA PERUANA Y  
OBTENER CONTRATOS URGE CONFIRMANOS MAYOR  
BREVEDAD FECHA ENTREGA PEDIDOS TRAMITO DE LA  
PIEDRA SALUDOS FRANCISCO RESTREPO HELICOL

IN ORDER TO ACT ON CREATION OF PERUVIAN  
COMPANY AND OBTAIN CONTRACT, WE  
URGENTLY NEED CONFIRMATION SOON AS  
POSSIBLE DELIVERY DATE ON ORDERS BEING  
PLACED BY DE LA PIEDRA. REGARDS. FRAN-  
CISCO RESTREPO, HELICOL

mh

\*\*

BELCOPTERFTW

441225 NL CO

\*\* Indicates information deleted due to illegibility or inability to  
reproduce.

143a

TELEX DATED DECEMBER 18, 1975

RCA 1630 18  
BELCOPTERFTW  
441225 HL CO

\*\*

BOGOTA DICIEMBRE 18/75                           4:30PM  
ATT. GEORGE GONZALEZ

\*\*

TELEX NO. 192

URGE ENVIEN CONDICIONES ARRENDAMIENTO HELICOPTERO BELL 214B  
DALUDOS RESTREPO HELICOL

URGENT YOUR SEND LEASING CONDITIONS  
FOR 214 B HELICOPTER. REGARDS.

/s/ Restrepo, Helicol

BELCOPTERFTW  
441225

\*\* Indicates information deleted due to illegibility or inability to reproduce.

DEPOSITION OF CHARLES JAMES NOVAK  
FEBRUARY 10, 1978

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[4] Q. What is your full name?

A. Charles James Novak.

Q. Where do you live?

A. At 10184 Longmont, Houston.

Q. What do you do for a living?

A. I'm a professional engineer.

Q. Who do you work for?

A. Brown & Root, Inc.

Q. How long have you worked for Brown & Root?

A. Approximately six months.

Q. What did you do before you worked for Brown & Root?

A. I was employed by the Williams Companies in Tulsa, Oklahoma, for twelve years.

Q. What are the Williams Companies in Tulsa, Oklahoma?

A. The Williams Companies are a conglomerate corporation consisting of a foreign construction division, a pipeline transportation division, an agricultural plant, and food division.

[5] Q. Have you ever been associated with a company or business called Williams-Sedco-Horn?

A. In September of 1974 I was appointed the general manager of Williams-Sedco-Horn to oversee the Houston office.

Q. Tell me what Williams-Sedco-Horn is or was.

A. Williams-Sedco-Horn was a joint venture organized to fulfill a contract for a crude oil pipeline from the jungles of Peru to the Pacific Ocean for Petro Peru, a state-owned oil company.

Q. I'd like you to tell us just a little bit more about the project. Petro Peru was going to be the owner of the pipeline?

A. Yes, sir. It is a government entity.

Q. What size project was this?

A. The final cost was approximately seven hundred million. Our particular contract value was a hundred and seventy-one million, plus or minus.

Q. Where was the pipeline to be built?

A. It was built in the jungles in eastern Peru at a place called Yauyos to Morococha to Bayovar on the Pacific Ocean.

[6] Q. How long a distance is that?

A. The total pipeline was about nine hundred and fifty kilometers.

Q. Tell me a little bit more about that. It was a joint venture?

A. Yes.

Q. Who was in that joint venture?

A. The Williams Companies out of Tulsa, Sedco Drilling Company out of Dallas and Horn Construction Company out of Merrick, New York.

Q. Was there a managing partner?

A. Yes, Williams was the managing partner.

Q. When was your first association with Williams-Sedco-Horn?

A. In September when I was appointed the general manager of the Houston office.

Q. When was the contract between Williams-Sedco-Horn and Petro Peru entered into?

A. If memory serves me right, September 16, 1974.

\* \* \*

[7] Q. When did you set up the Houston office for Williams-Sedco-Horn?

A. We started organizing it in the last half of September.

Q. Of 1974?

A. 1974.

Q. This lawsuit that we are here today involves the crash of a helicopter in Peru in 1976?

A. No, 1975.

Q. Would you tell us, by way of background, why you needed helicopters to build a pipeline in Peru?

A. Because the jungle was completely inaccessible. There are no roads, other than the waterways. You could either get into the place by boat or by helicopter, airplane.

Q. Are you familiar with the company called Helicopteros Nacionales de Columbia or Helicol?

A. Yes.

Q. What is your familiarity with Helicol?

A. Prior to this contract, I had heard of them as one of the leading helicopter service companies in South America.

[8] Q. Where had you heard of them?

A. Through Williams.

Q. Had they worked with Williams before?

A. Yes.

Q. Where had they worked?

A. They had worked in Columbia and they worked in Ecuador and, I believe, Bolivia.

Q. Prior to the Williams-Sedco-Horn contract with Helicol, had you ever, yourself, met any of the officers or agents or employees of Helicol?

A. No, sir.

Q. Why was Helicol selected by Williams-Sedco-Horn?

A. In the opinion of management, we thought they were the best qualified to do our services over the jungle area.

Q. Based on your past experiences?

A. Based on past experiences, yes.

Q. Do you know a man named Francisco Restrepo and, I believe, there is an "o" after his last name?

A. I knew of him before the joint venture and then I met him in October, the first part of October, when he came up to our office to finalize the contract.

[9] Q. Who is Paco Restrepo?

A. Evidently, that's his nickname.

Q. Who is Paco Restrepo?

A. He's general manager of Helicol.

Q. Is he the head man at Helicol?

A. As far as I know.

Now, there might be a manager director that I don't know.

Q. When did you first meet Mr. Restrepo?

A. The first part of October.

Q. Where did the meeting take place?

A. It took place at Houston Contracting's office at 2807 Buffalo Speedway. . . .

[10] Q. What was the date of the meeting?

A. We have a telex from Restrepo saying he's arriving in Tulsa on the 2nd, so he came down here the morning of the 3rd and we had the meeting on October 4th, 1974.

Q. Do you know how he came down here?

A. Williams Company plane.

Q. What was the purpose of the meeting?

A. To get—well, among other things, basically, personnel problems and also to finalize the Helicol contract with the joint venture and get a management approval of this contract.

Q. Before the meeting, had there been some discussion with Helicol and Mr. Restrepo about the contract?

A. Yes. The joint venture partners more or less, since Williams was the managing partner and it had experience with Helicol, it said, "You take the lead and get in contact with Helicol and work out a contract and I'll go over it, approve it."

[11] Q. Was the purpose of this meeting to iron out the details of the contract?

A. Yes. The contract had pretty well been finalized with Williams—and I wasn't present—but, I assume, in Tulsa on the 2nd.

Q. When you say, "It had been finalized in Tulsa on the 2nd," what do you mean by that?

A. They more or less reached an agreement on the major points and we came down to this meeting and talked in general terms: who is going to supply fuel, who is going to camp our people, how much time you are going to be off, how are we going to get our people in and basic generalities are what we talked about.

Q. How long did the meeting last?

A. Well, the whole management meeting lasted from approximately 9:30 until sometime mid-afternoon, 2:30 or so.

Q. Was Mr. Restrepo in attendance during the entire meeting?

[12] A. No. He was in and out.

Q. Was he there from 9:30 until 2:30?

A. He was in the building during that period, but he was in and out of the meeting.

\* \* \*

[14] Q. After the meeting broke up in October of 1974, was there anything else that needed to be done with regard to the contract or was the contract already completed?

A. I think a draft form had already been completed, but this was finalized and signed by the parties.

Q. Were all the details in what was going to be the contract decided upon in—

MR. GOFORTH: I object to that as leading.

A. Yes.

Q. What was left to do with the contract other than have it signed in Peru, after the meeting in Houston?

A. I don't know of anything, because I didn't work on it any longer after the management committee approved it.

\* \* \*

[15] Q. Will you turn with me to the English version of the contract, to paragraph number eight and would you read the first sentence of that paragraph for us, sir?

[16] A. "The monthly invoicing will be made up from Heli-col to Consorcio, in American dollars, the first ten days of each month in their offices in Lima and must be paid by the main office of Consorcio within thirty days following their presentation."

Q. Where was the main office of the Consorcio?

A. The main office was—in essence, there were two.

Q. Well, I want to talk about paragraph eight when it said "must be paid by the main office of Consorcio".

A. The main office is here.

Q. By "here", where do you mean?

A. Houston, Texas.

Q. How did billing work?

A. Helicol invoiced us for X number of hours a month and our people in the field had a log that they kept every day and signed their daily time sheets that they flew X number of hours each month. We got an invoice, then we got the daily log and compared them and if the figures compared, we approved the invoice and sent it to Houston and it was paid.

[17] Q. How was the payment in Houston handled?

A. Once we received the invoice approved, we passed it through our accounting department and cut a check for where they wanted the money deposited.

Q. The check was cut on a Houston bank?

A. Yes, First City National.

Q. Where was the money from First City National delivered?

A. I don't remember. We had numerous accounts that people wanted paid in different banks and I don't recall where Helicol said they wanted it deposited.

Q. Did you send the money to Peru?

A. No. It was deposited in a U.S. bank someplace.

Q. Why was the money not sent to Peru?

A. First of all, you can't have U.S. dollars in Peru.

[18] Q. During the project, it was necessary to get another additional helicopter. I believe this was Bell 214. Can you tell us how this was arranged?

A. Basically, when I left Houston, Paul Schexnailder became the general manager in the Houston office. When we needed it, I called him and told him to find one and get it down here by a certain date.

Q. Who owned a Bell 214?

A. There were only three. One was owned by Rocky Mountain Helicopter in—I can't tell you the town—in Provo, Utah.

Q. How did that helicopter get to work in Peru? What was the arrangement between Helicol, Williams-Sedco-Horn and Rocky Mountain that enabled Rocky Mountain to fly a—

[19] MR. GOFORTH: I object to that because it implies that Helicol was involved in some sort of negotiations with Rocky Mountain, which may or may not have been.

Q. (By Mr. Graham) Go ahead and answer the question.

A. Helicol was operating in Peru and the PAFHB group—

Q. For the record, what is PAFHB group?

A. Peruvian Air Force Helicopter Branch.

They said they were not issuing any more permits for an outside concern to come in and fly helicopters. The only way it could be brought in was under Helicol's umbrella.

Q. How, exactly, did that work?

A. We paid a commission to Helicol to use their name.

Q. Did you have a contract between Williams-Sedco-Horn and Rocky Mountain?

A. I can't answer that because I did not see it. It was all up there in the Houston office while I was in Peru.

Q. Was it your understanding—

A. There was a contract, but I didn't see it.

[20] Q. Was it your understanding that Rocky Mountain was a subcontractor under Helicol?

A. I guess, in essence, it was. Yes.

Q. How did Rocky Mountain get paid for its services in Peru?

A. We paid them directly out of the Houston office. I believe the fee was ten percent and we paid the other ten percent to Helicol.

Q. What were your instructions to Mr. Schexnailder about getting Rocky Mountain and Helicol together?

A. Other than the fact that I told him they couldn't come in as Rocky Mountain. He had to work out something through the Helicol name.

Q. When you were in Peru, did you have a chance to meet any of the Helicol pilots?

A. I knew them all. I rode with them most of the time.

Q. To your knowledge did any of these pilots come to the state of Texas?

A. Some of them said they were going to.

Q. Where did they say they were going?

A. To Bell for training.

MR. GOFORTH: I object to that as hearsay.

Q. (By Mr. Graham) Was this at Fort Worth?

A. Yes.

Q. Had any of them told you they had been to Bell before?

A. I don't recall. Some of them said they were going.

MR. GOFORTH: I object to it as hearsay.

[21] Q. (By Mr. Graham) Can you tell us a little bit more about what you know of Helicol's business? What other major jobs did they have?

A. Helicol had a contract for Occidental. They had another contract for Occidental in Bolivia while they were in Peru that didn't have anything to do with Peru. They flew all over South America.

Q. How big a company is Helicol?

A. I have no idea. It's owned by Avianca, the Colombian state airlines.

\* \* \*

[22] Q. Do you know if Mr. Restrepo was in Texas any more than the time you have already told us about?

A. No, sir, I don't.

\* \* \*

[24] Q. When you decided to use Helicol, did you consider the training of their pilots as one of the reasons you decided to use them, rather than the Peruvian air force?

A. When we looked at the job before we bid it, we rode with the Peruvian air force people and they were not very good. Basically, Peru or Latin America's attitude is "manna", so they are not going to do the work these other people will do and we couldn't afford to have a forty-percent operation when we needed a hundred-percent operation and Helicol could give us the hundred percent.

Q. Was it significant to you that Helicol had American-trained pilots?

[25] A. They did not. They had Colombian pilots. They have been in business twenty-one or twenty-two years as a helicopter service company.

\* \* \*

MR. GOFORTH (COUNSEL FOR HELICOL)

[25] Q. Do you know any of the plaintiffs who brought these lawsuits against Williams-Sedco-Horn and Helicol?

A. Yes.

Q. Do you know the survivors?

A. Yes.

Q. Do you know the men—

A. Yes.

Q. —Mr. Hall and Mr. Moore, Mr. Llewellyn, Mr. Porton?

A. Yes.

Q. Was it Porton? Was that his name?

A. Yes, Alton Porton.

[26] Q. Did any of these people live in Texas?

A. I'd have to look at the personnel records.

Q. Do you know whether or not any of their families were in Texas while they were down there in Peru working for Williams-Sedco-Horn?

A. No, sir, I don't.

Q. I guess you have got the records?

A. The joint venture has them.

Q. Do you know whether any of these four men hired out of Houston?

A. They were all hired out of Houston.

\* \* \*

[27] Q. Just so that the Judge is not misled, this contract wasn't entered into in Houston, was it, sir?

A. The parties shook hands in Houston. It was signed in other places, I guess.

Q. It was signed in Lima, wasn't it?

A. Mr. Riga signed it in Lima.

Q. On November 11, 1974. Isn't that right?

A. That's what it says; yes, sir.

Q. Did he sign this English version down there in Lima?

A. No. He signed the Spanish. He was fluent.

\* \* \*

[28] Q. Well, when did you first see this English translation?

A. When I had Berlitz translate it for me.

Q. After Mr. Riga had signed it down in Lima?

A. Right.

Q. So, it was after November 11, 1974?

A. Right.

Q. So, you didn't have an English-language version of this thing before it was signed in Spanish down in Lima?

A. No, sir.

This was just my initial that I had read it and this was a copy of that contract.

Q. You had read it after it had already been signed in Lima?

A. That's right.

Q. And you are the one that had it translated?

A. Yes, sir.

Q. When you had this meeting in October, did you have a copy of this?

A. The draft copy of that, yes.

[29] Q. The draft copy, was it in English or Spanish?

A. I can't tell you right offhand. I don't have any idea.

Q. Since you had to get it translated, it probably was in Spanish, don't you think?

A. I suspect it was both, but it was in a draft form and that was carried on back to Lima while they finalized the thing.

Q. And you don't remember seeing it in English.

I suppose you are fluent in Spanish?

A. No.

Q. Do you read Spanish at all?

A. No.

Q. Can you read a document like this?

A. No, sir, I cannot.

Q. So, the first time, as far as you know, that you ever saw that document in English was after it was signed, when you had Berlitz translate it?

A. Right.

Q. Now, how many times did you see Mr. Restrepo in the United States?

A. Only the one time.

Q. And he was here on this visit in October that you testified about?

A. Yes.

[30] Q. That was the only time you ever saw him?

A. Yes.

Q. Now, have you ever seen anybody else from Helicol in Texas?

A. Not that I know of. No, sir.

Q. They might have, but you didn't see them?

A. They didn't come by and pay a special call to Williams-Sedco-Horn.

Q. Mr. Restrepo was the only person from Helicol that you ever saw in Texas while you were the general manager of the Williams-Sedco-Horn operation?

A. Right.

Q. The only person from Helicol that you ever saw in Texas was Mr. Restrepo?

A. Right.

Q. That was one time?

A. Yes.

Q. That was the meeting from 9:30 a.m. to 2:30 p.m. in October?

A. Approximately October.

Q. He was in and out?

A. Right.

Q. And you said, I think, that you assumed that he was out talking with other people when he was gone?

[31] A. Evidently, because the first part of the meeting was to agree with the executive committee that the general terms of this contract were okay and then he got up and excused himself and left and came back in at different times. What he was doing, I don't know.

Q. Do you know what he was doing while he was gone?

A. No, sir, I do not.

Q. Do you know what happened with this contract from October 3rd or 4th, whenever it was, until November 11 when Mr. Riga signed it?

A. I can only tell you what I think.

It was back in Lima being agreed to by the lawyers of both parties.

Q. So, they had to actually finalize it down in Lima, the lawyers in Peru, the people who knew what they were doing and knew what that contract was going to be for. They actually were going over it and they signed it on November 11, by Mr. Riga?

A. In Spanish.

Q. As far as you know, this contract was never signed in English?

A. No.

[32] Q. It was intended to be performed totally in Peru?

A. That's the only place we had any service for helicopters.

Q. You didn't intend for them to come up here and do any helicopter work for you up here?

A. No. We didn't have any work up here.

Q. Was Williams-Sedco-Horn conceived solely to perform this work down in Peru?

A. Yes.

\* \* \*

Q. When Mr. Restrepo was here, did he talk about doing work for anybody else other than in Peru?

A. No.

[33] Q. Did he solicit your business for anything else other than this contract that you were entering into?

A. That's the only thing we were talking to him about.

\* \* \*

[35] Q. What did Rocky Mountain provide?

A. A 214 helicopter for hanging pipe in the mountain country.

Q. Where were those negotiations carried out?

A. Right here in Houston.

Q. Where is Rocky Mountain Helicopters located?

A. Provo, Utah.

Q. Mr. Peterson came down from Provo and he negotiated with somebody from Williams-Sedco-Horn?

A. Paul Schexnailder.

Q. And you are not testifying at all that anybody from Helicol was present?

A. I don't know.

Q. You simply know that this helicopter was brought down into Peru?

A. Right.

Q. And was piloted by Helicol pilots?

A. No, sir. It was piloted by Rocky Mountain pilots.

[36] Q. So, Helicol had nothing to do with the operation of this helicopter?

A. That's right. It was just under their name.

Q. Do you know whether they helped to maintain the helicopter or whether it was maintained by Rocky Mountain?

A. It was maintained by Rocky Mountain.

Q. So, everything with regard to the helicopter was performed by Rocky Mountain?

A. Right.

\* \* \*

Q. Did you have continuous dealings with Helicol until the end of the contract period?

A. No, sir. The permits ran out on December 31, 1976, and all of the helicopters left the country.

[37] Q. Up until that time, do you know of anybody else but Helicol that ever came to the United States?

A. No, sir.

Q. Did you deal with anybody from Helicol?

A. We did, down in Peru, all the time.

Q. Did you deal with them in Peru?

A. They had a manager of operations down there, just like myself, that took care of their business in Peru.

Q. What was his name, sir?

A. Oh, Lord—I can't tell you.

Q. Well, let me ask you this: Did he ever come to Texas?

A. Yes, he did. He came to Texas when he helped Rocky Mountain ferry the 214 down there.

Q. So, he was a pilot?

A. Well, he came as a ferry pilot. He came to someplace in the United States and I assume—I don't know where. I can't answer that, but he did come to help them ferry it down.

Q. So you don't know whether or not it was in Texas, just somewhere in the United States?

A. Right.

Q. Their headquarters were in Provo, Utah?

A. Right.

[38] Q. He very easily could have gone to meet the helicopter in Provo, Utah?

A. Right.

Q. Do you know of any other occasion when he came to the United States?

A. No, not offhand. No.

Q. Any dealings that you had with him with regard to this contract were performed in Peru?

A. Yes. He came by the office all the time and we talked our problems out, first one thing and another.

Q. The fact of the matter is all of the dealings that you had with Helicol at any time with regard to this contract—

A. The operational part of it, right.

Q. —were in Peru?

A. Right.

MR. GOFORTH: I don't think I have any more questions.

MR. PLETCHER (COUNSEL FOR PLAINTIFFS)

Q. What I am trying to establish for my own purposes here for my client is what contacts Helicol had with the State of Texas and are you aware that Helicol bought its helicopters from Bell Helicopter in Fort Worth?

[39] A. Only the fact that's where Bell helicopters are made as far as I know, that's the only source of sales.

Q. And that's the kind of helicopter they used?

A. Yes, the Bell 205.

Q. Are you familiar with the fact that helicopter pilots are trained at Fort Worth by the Bell Helicopter people?

A. Other than the pilots saying they were going to Bell for training.

Q. Were you aware that Helicol got all of its parts for their helicopters from Fort Worth?

A. Other than the fact that that's the only place that they have a source of supply.

Q. Were you aware, Mr. Novak, that Helicol did several million dollars worth of business with Bell Helicopter over a period of three or four years before the crash?

MR. GOFORTH: I object to these questions as leading.

Q. (By Mr. Pletcher) Go ahead and answer.

A. Yes, sir.

Q. As I understand it, these things you do know, would not be hearsay, but because you have personal knowledge. You know Helicol sent its general manager—he came here to Houston and you all discussed the contract that we are concerned with here in this case and the parties were all represented here and you shook hands on it and made the deal here?

[40] A. Right.

Q. The lawyers handled it down in Peru, as far as putting it in legal language and getting it signed was done down there?

A. Yes.

MR. GOFORTH: I object to that as leading.

Q. (By Mr. Pletcher) The agreement was here and the handshake took place here in Houston?

A. Right.

Q. And these men who were killed in the helicopter crash were contracted for the job right here in Houston?

A. Right.

Q. Helicol billed Williams-Sedco-Horn in the City of Houston and sent their bills here for payment?

A. Well, they billed us in Lima and we, in turn, sent it here, because they wanted it paid in U.S. dollars and you could not have U.S. dollars in Peru.

[41] Q. You did that because Helicol wanted you to do it that way?

A. Yes.

Q. Helicol was then paid in checks drawn on the First City National Bank?

A. Right.

Q. In Houston.

MR. PLETCHER: I believe that's all.

\* \* \*

\* \* \*

WYATT H. HEARD  
JUDGE, 190TH DISTRICT COURT  
CIVIL COURTS BUILDING  
HOUSTON, TEXAS 77002

March 28, 1978

[To Counsel of Record for all parties]

RE: No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,  
190TH DISTRICT COURT

GENTLEMEN:

You will recall that we heard the above on February 28th and March 6th. After listening to all of the evidence, summations of counsel and reading the briefs submitted on behalf of the respective interests, the court overrules the motion for special appearance.

Counsel will prepare the appropriate order for entry by the court.

Sincerely,

/s/ Wyatt H. Heard  
WYATT H. HEARD

IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT  
CAUSE NO. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**ORDER OF CONSOLIDATION**

BE IT REMEMBERED, that on the 25th day of April, 1980, came on to be heard Bell Helicopter Company's Motion for Consolidation, and the Court being of the opinion that said Motion should be GRANTED, it is, therefore,

ORDERED, ADJUDGED and DECREED that the following cases be consolidated into this case:

*Cause No. 1,098,919—Naomi Lewallen, et al v. Williams-Sedco-Horn, a Joint Venture, et al; In the 189th Judicial District Court of Harris County, Texas;*

*Cause No. 1,098,921—Louise C. Moore, et al v. Williams-Sedco-Horn, a Joint Venture, et al; In the 164th Judicial District Court of Harris County, Texas;*

*Cause No. 1,098,920—Harve Porton, et al v. Williams-Sedco-Horn, et al; In the 215th Judicial District Court of Harris County, Texas.*

SIGNED this 12th day of May, 1980.

/s/ Judge Wyatt H. Heard  
JUDGE WYATT H. HEARD  
190th Judicial District Court

IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

**NO. 1,087,423 (CONSOLIDATED)**

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
189TH JUDICIAL DISTRICT

**NO. 1,098,919**

NAOMI LEWALLEN, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
164TH JUDICIAL DISTRICT

**NO. 1,098,921**

LOUISE C. MOORE, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
215TH JUDICIAL DISTRICT

**NO. 1,098,920**

HARVE PORTON, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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**JUDGMENT**

BE IT REMEMBERED that on the 27th day of May, 1980, at a regular term of this Court, there came on to be heard, in due order, the above entitled and numbered consolidated causes;

thereupon came the plaintiffs, Elizabeth C. Hall, individually and as Next Friend of Delbert Hall, a minor, Lydell C. Hall, Pamela Hall Toler, John H. Hall, Harve Porton and Verda Ola Porton, individually and as Next Friend of Jeffery Taylor Porton, a minor, Michael Elton Porton, Susan Carol Porton, Naomi Lewallen, individually and as Next Friend of Ginger Lewallen, a minor, Gary Lewallen, Glenda Lackland, Glen Lewallen, Gay Smith, Louise C. Moore, Stanley C. Moore and Susan C. Moore, in person and by their attorney of record, and came also the defendant, Helicol, by and through its attorney of record, the defendants, Bell Helicopter Company and Williams-Sedco-Horn, a Joint Venture, through their attorneys of record, and all parties announced ready for trial; whereupon a jury of twelve duly qualified jurors were tested, selected, impaneled and sworn and said cause proceeded to trial; whereupon the pleadings of the parties having been stated to the jury, all parties then introduced their testimony at which time the evidence and testimony adduced on behalf of the parties having been concluded and the parties having rested, the Court granted instructed verdict to Williams-Sedco-Horn, a Joint Venture, and withdrew the claims of all parties against Bell Helicopter Company from the jury and rendered judgment in favor of Bell Helicopter Company that plaintiffs, Helicol and Williams-Sedco-Horn take nothing against Bell Helicopter Company. After having heard the arguments of counsel and having been given the charge of the Court the Jury returned into open Court on June 3, 1980 its verdict, to-wit:

**SPECIAL ISSUE NO. 1:**

Do you find from a preponderance of the evidence that the pilot failed to keep the helicopter under proper control on the occasion in question?

Answer: "We do".

**SPECIAL ISSUE NO. 2:**

Do you find from a preponderance of the evidence that such failure was a proximate cause of the crash in question?

Answer: "We do".

**SPECIAL ISSUE NO. 3:**

Do you find from a preponderance of the evidence that on the occasion in question the helicopter was flown into a treetop fog condition, whereby the vision of the pilot was impaired?

Answer: "We do".

**SPECIAL ISSUE NO. 4:**

Do you find from a preponderance of the evidence that such flying was negligence as that term has been defined for you?

Answer: "We do".

**SPECIAL ISSUE NO. 5:**

Do you find from a preponderance of the evidence that such negligence, if you have so found, was a proximate cause of the crash in question?

Answer: "We do".

**SPECIAL ISSUE NO. 6:**

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Elizabeth Hall for her pecuniary loss, if any, resulting from the death of Dean C. Hall?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that Elizabeth Hall would in reasonable probability have received from Dean C. Hall during his lifetime had he lived.

Answer in dollars and cents, if any.

Answer: \$300,000

**SPECIAL ISSUE NO. 7:**

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Dean C. Hall for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Delbert Hall \$30,000  
 To Lydell C. Hall -0-  
 To Pamela Hall Toler -0-  
 To John H. Hall -0-

**SPECIAL ISSUE NO. 8:**

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Elton F. Porton for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Michael Elton Porton -0-  
 To Susan Carol Porton \$30,000  
 To Jeffery Taylor Porton \$30,000

**SPECIAL ISSUE NO. 9:**

What sum of money, if any, if paid now cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the parents of Elton F. Porton for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that such parents would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Harve Porton \$15,000  
 To Verda Ola Porton \$15,000

## SPECIAL ISSUE NO. 10:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Naomi Lawallen for her pecuniary loss, if any, resulting from the death of Jesse Lee Lewallen?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that Naomi Lewallen would in reasonable probability have received from Jesse Lee Lewallen during his lifetime had he lived.

Answer in dollars and cents, if any.

Answer: \$350,000

## SPECIAL ISSUE NO. 11:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Jesse Lee Lewallen for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Gary Lewallen \$30,000  
To Ginger Lewallen \$30,000  
To Glenda Lackland -0-  
To Glen Lewallen -0-  
To Gay Smith -0-

## SPECIAL ISSUE NO. 12:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Louise C. Moore for her pecuniary loss, if any, resulting from the death of Leonard F. Moore?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that Louise C. Moore would

in reasonable probability have received from Leonard F. Moore during his lifetime had he lived.

Answer in dollars and cents, if any.

Answer: \$300,000

SPECIAL ISSUE NO. 13:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Leonard F. Moore for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other, care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Stanley C. Moore -0-  
To Susan C. Moore -0-

We, the jury, have answered the above and foregoing special issues as herein indicated, and herewith return the same into court as our verdict.

The aforesaid answers and verdict of the Jury were duly received by the Court, the Jury was polled by the Court and acknowledged the verdict and upon motion it was ordered that the verdict be filed and it was so filed. Based upon such verdict, and after motions duly made for judgment, and the Court having denied defendant, Helicol's Motion for Judgment Non Obstante Veredicto, the Court finds that judgment should be entered as follows:

It is ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Elizabeth Hall, do have and recover of and from the defendant, Helicol, THREE HUNDRED THOUSAND DOLLARS (\$300,000), plus reasonable funeral expenses of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that minor plaintiff, Delbert Hall, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000), which sum, following the deduction of attorneys' fees, shall be paid into the Registry of the Court or shall be deposited in a proper savings institution until he reaches his majority or until such further Order of this Court, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Susan Carol Porton, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that minor plaintiff, Jeffery Taylor Porton, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000) which sum, following the deduction of attorneys' fees, shall be paid into the Registry of the Court or shall be deposited in a proper savings institution until he reaches his majority or until such further Order of this Court, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiffs, Harve Porton and Verda Ola Porton, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000) being \$15,000 for Harve Porton and \$15,000 for Verda Ola Porton, plus reasonable funeral expenses in the amount of THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Naomi Lewallen, do have and recover of and from the defendant, Helicol, THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000), plus reasonable funeral expenses in

the amount of THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Gary Lewallen, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000) together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that minor plaintiff, Ginger Lewallen, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000), which sum, following the deduction of attorneys' fees, shall be paid into the Registry of the Court or shall be deposited in a proper savings institution until she reaches her majority or until such further Order of this Court, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Louise C. Moore, do have and recover of and from the defendant, Helicol, THREE HUNDRED THOUSAND DOLLARS (\$300,000), together with reasonable funeral expenses in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED that cross-plaintiff, Williams-Sedco-Horn, do have and recover of and from the defendant, Helicol, SEVENTY THOUSAND DOLLARS (\$70,000), which Williams-Sedco-Horn and Helicol have stipulated in open court to be the reasonable amount of Williams-Sedco-Horn's attorney's fees and expenses in connection herewith, with interest thereupon at nine percent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED that any relief not expressly granted by this judgment is denied and that all cross-plaintiffs (save and except Williams-Sedco-Horn

in its cross-action against Helicol) having filed cross-actions herein, take nothing from the cross-defendants in those respective cross-actions, with the costs of said cross-actions being borne by those parties who filed them.

Wherefore, on the basis of the damages as found in the verdict of the Jury and those stipulated by the parties, it is ORDERED, ADJUDGED AND DECREED that the plaintiffs have judgment against Helicol in the total amount of ONE MILLION ONE HUNDRED THIRTY THOUSAND DOLLARS (\$1,130,000), plus reasonable funeral expenses in the total amount of ELEVEN THOUSAND TWO HUNDRED DOLLARS (\$11,200), together with interest thereon at nine per cent (9%) per annum from this date until paid, and for all costs of Court incurred in this cause, and that Williams-Sedco-Horn have judgment against Helicol in the total amount of SEVENTY THOUSAND DOLLARS (\$70,000), together with interest thereon at nine per cent (9%) per annum from this date until paid and for the costs incurred in connection with its cross-action against Helicol.

JUDGMENT SIGNED on this 7th day of July, 1980.

/s/ Wyatt H. Heard

WYATT H. HEARD, JUDGE

COURT OF CIVIL APPEALS OF TEXAS, HOUSTON  
(1st Dist.)

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No. 17882

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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL"),*Appellant,*

v.

ELIZABETH HALL, *et al.*,*Appellees.*

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Appeal From The District Court Of Harris County

This is an appeal from a money judgment awarded to appellees in a wrongful death action arising out of a helicopter crash in Peru, South America. Specifically, Helicopteros Nacionales De Colombia, S.A. (Helicol) is appealing from an order overruling its special appearance pursuant to Rule 120a, T.R.C.P.

We reverse and order the case dismissed.

Helicol, South American, corporation with its residence in Colombia, was sued by the appellees, survivors of four men killed in a helicopter accident which occurred in the jungles of Peru in January, 1976. Service was had upon Helicol under the "long-arm" statute, Tex. Rev. Civ. Stat. Ann., art. 2031b.

Although the actions by the survivors of the four men were filed separately, the four cases ultimately were consolidated for all purposes. Prior to consolidation, however, the special appearance pursuant to Rule 120a was timely filed in each of the causes. Pursuant to an agreement between counsel for Helicol and counsel for appellees, a special appearance hearing was conducted with testimony presented and evidence admitted in only one of the cases. It was agreed by the attorneys for all the parties that the testimony and evidence presented during that special appearance hearing would be filed and used as

the testimony and the evidence presented by the parties in each of those cases. The courts in all four cases honored those agreements and after considering the testimony and the evidence, overruled the special appearances filed by Helicol. The transcribed testimony and attached exhibits which have been filed with this court on appeal are the same transcribed testimony and exhibits considered by the trial court in all four cases. A motion for reconsideration of the overruling of Helicol's special appearance was filed and also overruled. The case proceeded to a jury trial on the merits. A verdict was returned against Helicol and appellees were jointly awarded \$1,141,200, together with post-judgment interest.

We are not here concerned with the record in this case as it relates to the verdict and judgment. Our sole concern is whether or not the evidence adduced at the special appearance hearing supports the overruling of Helicol's special appearance.

The appellant asserts two points of error, the first of which avers that the court erred in overruling the special appearance of Helicol because Helicol, a South American corporation, was not doing business in Texas and did not otherwise engage in acts which come within the purview of art. 2031b. By point of error two, Helicol complains that the trial court erred in overruling the Rule 120a special appearance of Helicol because Helicol, a foreign corporation, did not have sufficient contacts with Texas to meet the requirements of the constitutional minimum contacts test so that the exercise of *in personam* jurisdiction over Helicol offended the traditional notions of fair play and substantial justice as set out by the Fourteenth Amendment of the U.S. Constitution.

Pursuant to Rule 120a, a defendant may file a special appearance and if such appearance is overruled, the defendant may then enter a general appearance. By entering the general appearance, the defendant does not waive the right to appeal the denial of its special appearance. Rule 120a, T.R.C.P.

Originally, appellees attempted to serve Helicol by serving a sister subsidiary of Helicol, Avianca, Inc., a New York corporation authorized to do business in Texas. It was undisputed that while both subsidiaries are owned by Aerovias Nacionales De Colombia, S.A., that they have no mutual business connections. In *Gentry v. Credit Plan Corporation of Houston*, 528 S.W.2d 571 (Tex. 1975), the court held that a subsidiary will not be responsible for the acts of a parent except "where the management and operations are assimilated to the extent that the subsidiary is simply a name or conduit through which the parent conducts its business." The evidence in the case shows Helicol is not a part of Avianca, Inc. and therefore jurisdiction cannot be maintained over Helicol by serving Avainca, Inc.

Appellees next sought to maintain jurisdiction over Helicol pursuant to art. 2031b. Article 2031b provides in pertinent part:

Sec. 3. Any foreign corporation . . . that engages in business in this State . . . and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to appointment by such foreign corporations . . . of the Secretary of State of Texas as an agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation . . . is a party or is to be made a party.

Sec. 4. For the purposes of this Act, and without including other acts that may constitute doing business, any foreign corporation, . . . shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located inside or outside Texas shall be deemed doing business in this State.

In order to maintain jurisdiction over Helicol, it must be shown that it either committed a tort in Texas or entered into a contract to be performed in whole or in part in Texas. The undisputed evidence shows that the helicopter crash occurred in the jungles of Peru. Clearly, Helicol did not commit a tort in whole or in part in Texas, and thus the tort requirements of art. 2031b are not met. The record is in dispute as to whether Helicol entered into a contract to be performed in whole or in part by either party in Texas.

The facts in this case show that a joint venture known as Williams-Sedco-Horn (WSH) contracted with Helicol to furnish helicopter transportation service in connection with the construction of a pipeline in Peru. WSH employed the four men who died in the helicopter crash. There was never a contract between Helicol and appellees and Helicol's services were to be provided only in Peru.

A dispute arises in the evidence as to whether the contract between WSH and appellants was negotiated in Texas, Oklahoma or Peru. Helicol introduced testimony to show the contract was negotiated in Oklahoma; the parties discussed the amount and size of equipment in Houston, Texas, and that it was finalized, written and executed in Spanish in Peru. Helicol also showed that the contract required final approval from the Peruvian government. Payment for Helicol's services was invoiced in Peru and then American dollars were to be deposited in bank accounts in Panama and New York City. It is undisputed that the money came from a Texas bank where WSH had an account. Helicol did not have any bank accounts in Texas. The following testimony was offered by Mr. Restrepo, called by Helicol:

Q: The contract that was entered into by Helicol with Williams-Sedco-Horn for the transportation that was involved in this accident, was that contract negotiated or signed in the United States?

A: No, sir.

Q: Where was it signed, sir?

A: Lima.

Q: That's Lima, Peru?

A: Yes.

Q: Where was this signed and executed?

A: In Lima, Peru.

Q: This contract, Mr. Restrepo, why was it executed for Helicor by a lawyer in Peru, can you tell the Court that?

A: Because it has to be done according to the Peruvian laws.

Q: The contract had to be executed in accordance with Peruvian laws, is that what you said?

A: Yes.

Q: Which Peruvian governmental agency handled the contractual negotiations?

A: The Peruvian Air Force.

Q: Did they participate in the writing of the contract?

A: Yes, they have to approve the contract.

Q: So the contract even had to be printed on official papers of Peru?

A: Yes, sir.

Q: Just to make it perfectly clear, Mr. Restrepo, this contract was not executed in the United States, is that right, sir?

A: No.

Q: He (Novak) testified in his deposition that you made the deal down here in Houston, that is where you entered into the agreement for Helicor to provide the helicopter services, is that right?

A: They called me to discuss the amount and the size of the helicopter, but the deal was already done, like I said, in Peru.

Further, the entire discussion of the jurisdiction question seems to be answered by paragraph 19 of the contract, which states that all parties agree that Lima, Peru, is the residence

for all related to the contract and that the parties submitted to the jurisdiction of Peru.

Appellees contend that the contract was to be performed in part in Texas because of a provision therein, "that payment must be paid by the main office . . ." of WSH. However, even if WSH's main office were in Houston, the contract directed that the payments be made to Helicol's accounts in New York or Panama City. Nor can we determine that the place of payment in the contract had any significant bearing on the parties' contractual relations. What difference could it have made with either party if the payments were made from Texas, California or wherever so long as they were in fact made? Consider the consequences of WSH's moving its "main office" to Mexico or elsewhere in the world. Would appellees then contend that such other places would be where the contract was to be partially performed? We conclude that such provision for payment "by the main office" could only mean that WSH was free to make the payments due to Helicol from wherever it chose.

There seems to be absolute agreement by the courts, state and federal, that before a non-resident defendant can be made to answer to the jurisdiction of Texas under its "long-arm" statute, it must be shown that such defendant is susceptible to the threefold "minimum contacts" and "fair play" tests for jurisdiction as set forth in *O'Brien v. Lanpar*, 399 S.W.2d 340 (Tex. 1966) and affirmed in the recent Texas Supreme Court case of *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977):

- 1) The non-resident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- 2) The cause of action must arise from, or be connected with, such act or transaction; and
- 3) The assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of the activity in the forum state, the relative convenience of the parties, the benefits and

protection of the forum state afforded the respective parties, and the basic equities of the situation. *Id.* 399 S.W.2d at 342.

The evidence before us fails to show that any of the foregoing requirements was met so as to give Texas jurisdiction of appellees' causes of action.

In a very similar fact situation involving a fatal helicopter crash off the coast of Ghana, Africa, Judge Seals in *Reich v. Signal Oil and Gas Company*, 409 F. Supp. 846 (S.D.Tex. 1974) aff'd mem. 530 F.2d 974 (5th Cir. 1976), gives an exhaustive analysis of the requirements and the cases involving the Texas "long-arm" statute. In *Reich*, the plaintiffs sought to establish "doing business" in Texas by showing that the helicopter in question was manufactured in Italy by Agusta and leased to defendant Bristow, a British corporation, pursuant to a licensing agreement with Agusta. The helicopter was manufactured by Agusta according to a design owned by Bell Helicopter Co., a corporation doing business in Texas. The helicopter was never in Texas. The plaintiffs claimed jurisdiction in Texas because Bristow had "numerous and substantial business contacts in Texas" and Agusta had entered into a licensing contract in Texas. In holding that the plaintiffs had not met their burden as required by art. 2031b, the court stated:

However, assuming arguendo that Agusta's Licensing Agreement was entered into in Texas, Plaintiffs have not alleged a contract cause of action, and this court has found no authority to support the thesis that one who is neither a party nor a third-party beneficiary to a contract may raise the contract for the purpose of establishing jurisdiction over a nonresident defendant. (citation omitted) But even if there were such a principle of law it is the opinion of this Court that under the facts of this case the Licensing Agreement would be insufficient to support a finding of jurisdiction. The mere fact of the existence of a contract possibly entered into in Texas does not provide jurisdiction in and of itself. The same basic factors of jurisdiction under the letter of the state statute and under the requirements of constitutional due process still obtain.

In the *U-Anchor* case, *supra*, the court observed that the Texas "long-arm" statute may reach only as far as the federal constitutional requirements of due process will permit and denied the Texas court jurisdiction over Burt, a nonresident. The basis of such denial was that Burt's contacts with Texas were minimal and fortuitous and that he had not "purposefully" carried on any activities within the state.

The facts before us are even stronger relative to Helicol's contacts with Texas. Helicol has neither offices, business records, employees, property, bank accounts nor a telephone number in Texas. It does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Appellees' arguments, that "fair play" and "substantial justice" would best be served by requiring Helicol to appear before a court in Texas, are not persuasive. The persons killed in the helicopter crash were residents of Oklahoma, Illinois, Arizona and South America. None of them or their representatives had any contacts with Texas. The contract between Helicol and WHS specifically provided that all parties thereto were to be subject to the forum and laws of Peru. Clearly then, Texas has no special interest in the suit arising between parties to the contract who had already committed themselves to be bound by Peruvian law.

Appellees have failed to show that Helicol had sufficient minimum contacts with Texas as would invoke the contract, tort or fair play requirements of the Texas "long-arm" statute.

We have considered appellees' contention that Helicol's action in filing a suit against Bell Helicopter Company con-

stituted a submission by Helicol to the jurisdiction of Texas. We do not agree that this is true. When Helicol filed its suit against Bell, Bell moved for and was granted a consolidation. Helicol's action, being a mandatory cross-claim under art. 2212a(2)(g), Tex. Rev. Civ. Stat. Ann., was required to be filed in the primary suit or lost. Helicol's right to relief against Bell had already been established when the primary suit was filed.

The judgments of the trial courts in overruling Helicol's special appearance are reversed; judgment is rendered granting Helicol's Rule 120a special appearance; and this case is ordered dismissed for lack of jurisdiction.

/s/ Henry E. Doyle  
HENRY E. DOYLE  
Associate Justice

Associate Justices Warren and Evans also sitting.

Judgment rendered and opinion filed January 22, 1981.

IN THE SUPREME COURT OF TEXAS

**No. C-243**

ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

("HELICOL"),

*Respondent.*

FROM HARRIS COUNTY FIRST DISTRICT

**ON MOTION FOR REHEARING**

*Our opinion of February 24, 1982, is withdrawn and this opinion is substituted therefor.*

Elizabeth Hall and the other plaintiffs in the trial court (Hall) are the survivors of four citizens of the United States killed in a helicopter crash in Peru while working in that country constructing a pipeline. Hall sued Helicol, the owner and operator of the helicopter which crashed, in Harris County, Texas, in four separate causes of action. Helicol entered a special appearance in each of the actions, to contest the jurisdiction of the Texas court pursuant to Rule 120a, TEX. R. CIV. P., all of which were overruled by the respective trial courts. The four actions were consolidated for trial resulting in a judgment for Hall. The court of civil appeals reversed the judgment of the trial court and ordered the case dismissed for lack of jurisdiction. 616 S.W.2d 247. We reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

The only issue before us is whether under the facts of this cause of action, was Helicol amenable to jurisdiction in Texas. Therefore, this Court must decide whether the trial court's

exercise of jurisdiction over Helicol was consistent with the requirements of due process of law under the Constitution of the United States.

In 1974, Petro Peru, the Peruvian state owned oil company, made a contract with Williams-Sedco-Horn,<sup>1</sup> (referred to as Consorcio in their contract), a joint venture based in Houston, Texas, to construct a pipeline from the interior of Peru to the Pacific Ocean. The defendant, Helicol, was brought into the project by Williams-Sedco-Horn to provide necessary transportation of workers and supplies, by helicopter, to regions where there were no roads. Helicol was originally contacted by a Williams executive who had contracted with Helicol in the past. In response to that contact, the general manager of Helicol flew to Oklahoma, and then proceeded to Houston, Texas to negotiate with the three members of the joint venture. After reaching agreement on all terms of the contract in Houston, those terms were related to Helicol's office in Peru. The contract in its final form was approved by the Peruvian Air Force as required by Peruvian law, typed in Spanish and executed by representatives of all parties in Peru. Helicol did not maintain an office in Texas, had no designated agent for service of process in Texas, was not authorized to do business in Texas, performed no helicopter operations in Texas, and did not recruit employees in Texas.

The deceased workers here in question, were not Texas residents, but were all United States citizens. They were hired by Williams-Sedco-Horn, in Houston, Texas, and sent to Peru to work on the pipeline. The workers were killed in the crash of a Bell helicopter, owned and operated by Helicol in Peru, during their transportation pursuant to the contract between Helicol and Williams-Sedco-Horn.

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<sup>1</sup> Williams-Sedco-Horn is a joint venture composed of Williams International Sundamericana, Ltd., a Delaware corporation headquartered in Tulsa, Oklahoma, Sedco Construction Corporation, a Texas corporation, and Horn International, Inc., a Texas corporation.

In addition to negotiating this contract, Helicol committed all of the following acts in Texas:

- a. Purchased substantially all of its helicopter fleet in Fort Worth, Texas;
- b. Did approximately \$4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of \$50,000 per month with Bell Helicopter Company, a Texas corporation;
- c. Negotiated in Houston, Harris County, Texas, with a Texas resident, which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action (previously mentioned), and wherein Helicol agreed to obtain liability insurance payable in American dollars to cover a claim such as this;
- d. Sent pilots to Fort Worth, Texas to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia;
- e. Sent maintenance personnel and pilots to Texas to be trained;
- f. Had employees in Texas on a year-round rotation basis;
- g. Received roughly \$5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and
- h. Directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question. (Involved leasing of a large helicopter capable of moving heavier loads for Williams-Sedco-Horn.)

We hold that these contacts constitute sufficient minimum contacts to find Helicol amenable to the jurisdiction of the Texas courts.

In their briefs before this Court, all parties agreed that our opinion in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977) controlled the disposition of this case.

In *U-Anchor*, we stated:

Article 2031b provides that a nonresident entering into a contract with a Texas resident performable in part by either party in Texas shall be deemed to be doing business in Texas. . . . We agree that in this respect, as well as with the respect to 'other acts that may constitute doing business,' Article 2031b reaches as far as the federal constitutional requirements of due process will permit. We let stand the statement in *Hoppenfeld v. Crook*, 498 S.W.2d 52 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 'that the reach of Art. 2031b is limited only by the United States Constitution.' . . . Furthermore, such a construction is desirable in that it allows the courts to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.'

In the *U-Anchor* opinion we specifically adopted the above language from *Hoppenfeld*. Also, in *U-Anchor*, this Court approved the three-prong test set out in *O'Brien v. Lanpar Company*, 399 S.W.2d 340 (Tex. 1966). That three-prong test is:

- (1) the nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- (2) the cause of action must arise from, or be connected with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice; consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

The second prong of the *O'Brien* test requiring that the cause of action must arise out of the contacts with the forum state, has been the subject of some controversy ever since the *O'Brien* test was adopted. The second prong is useful in any

fact situation in which a jurisdiction question exists; and is a necessary requirement where the nonresident defendant only maintained single or few contacts with the forum. However, the second prong is unnecessary when the nonresident defendants presence in the forum through numerous contacts is of such a nature, as in this case, so as to satisfy the demands of the ultimate test of due process. Accordingly through the statutory authority of Art. 2031b TEX. REV. CIV. STAT. ANN. there remains the single inquiry: is the exercise of jurisdiction consistent with the requirements of due process of law under the United States Constitution? This inquiry is frequently put into the following terms: ". . . due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

The U.S. Supreme Court has broadened the parameters of due process to allow inquiry into other "relevant factors." Recently in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Supreme Court reiterated that the relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." Citing, *International Shoe*, *supra*. In looking to this reasonableness, the U.S. Court stated that the burden on the defendant:

. . . while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 2 L.Ed.2d 223, 78 S.Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, [436 U.S.] at 92, 56 L.Ed.2d 132, 98 S.Ct. 1690, at least when that interest is not adequately protected by the plaintiff's pow-

er to choose the forum, c.f. *Shaffer v. Heitner*, 433 U.S. 186, 211 n. 37, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court*, *supra*, at 93, 98, 56 L.Ed.2d 132, 98 S.Ct. 1690.

*Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. at 291. Therefore, our inquiry can go beyond the substantial contacts which Helicol maintains in Texas, and we may also look to this State's interest in adjudicating the dispute; and Hall's interest in effective and convenient relief.

Texas has an interest in adjudicating this dispute. Hall is not a Texas resident, but is a citizen of this country. More importantly, Hall was hired in Houston, Texas, by a Texas resident. It cannot be questioned that this forum has an interest in protecting the employees of its "residents" (Williams-Sedco-Horn). This is especially necessary in light of the fact that Texas is the headquarters of countless international companies, and as a member of the "interstate judicial system," this State has an interest in obtaining the most efficient resolution of controversies and in furthering fundamental substantive social policies. (See above quote, citing *Kulko v. California Superior Court*, *supra*.)

Hall has a genuine interest and desire in obtaining convenient and effective relief. The U.S. Supreme Court directly considered the plaintiff's interest involved in *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). In *McGee*, a California resident was suing a Texas insurance company as a beneficiary under a life insurance policy. The defendant's only contact with California had been its mailing of the policy to the state, and its receipt of premium payments from the decedent. The U.S. Supreme Court addressed the relative convenience of the parties and based their decision allowing maintenance of the suit in California on the State's interest in providing effective redress, and the fact that an individual claimant could not overcome the difficulties of maintaining an action in a foreign forum ". . . thus in effect making the company judgment

proof." 355 U.S. at 223. The Court did recognize the inconvenience that this worked on the defendant, but based on the contacts of the defendant, due process would not be offended. Admittedly this cause does not fall precisely within the facts of *McGee*, it does fall within its spirit.

Based on the considerations of the above discussion and looking to the requirements of the *U-Anchor* test, we find that Helicol's numerous and substantial contacts do constitute "doing business" in this State and the trial court's actions do not offend due process.

The judgment of the court of civil appeals is reversed and the judgment of the trial court is affirmed.

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/s/ JAMES P. WALLACE  
Justice

Concurring opinion by Justice Campbell in which Justice McGee joins. Dissenting opinion by Justice Pope in which Chief Justice Greenhill and Justice Barrow join.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

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**No. C-243**  
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ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

(“HELICOL”),

*Respondent.*

\_\_\_\_\_  
FROM HARRIS COUNTY FIRST DISTRICT

\_\_\_\_\_  
**ON MOTION FOR REHEARING  
CONCURRING OPINION**  
\_\_\_\_\_

I concur with the result of the opinion by Justice Wallace for these additional reasons.

The issue in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), was “whether, consistently with the due process clause of the Fourteenth Amendment, an Oklahoma court may exercise in personam jurisdiction over a non-resident automobile retailer and its wholesale distributor in a products liability action, when the defendants’ only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an automobile accident in Oklahoma.” *Id.* at 287. The question before this Court is whether, consistently with the due process clause of the Fourteenth Amendment, a Texas court may exercise in personam jurisdiction over a non-resident provider of helicopter services, when the defendant’s connections with Texas were all of those listed in the opinion by Justice Wallace.

In *World-Wide*, there was no evidence that World-Wide or its retail distributor, Seaway, did any business in Oklahoma,

shipped or sold any products to or in that state, had an agent to receive process there, or purchased advertisements in any media calculated to reach Oklahoma. During oral arguments before the U.S. Supreme Court, plaintiff's attorney conceded there was no showing that any automobile ever sold by World-Wide or Seaway had ever entered Oklahoma with the single exception of the car involved. *Id.* at 289. Thus, *World-Wide* holds that driving a car through a state is not such "minimum contacts" to give that state jurisdiction in an action against a New York seller.

In reaching this decision, the U.S. Supreme Court stated: Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the state. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

444 U.S. at 295.

Applying that same language to the facts of this case, I would write: Helicol carries on much business in Texas. They close many purchases of helicopters and spare parts and negotiate contracts in Texas. They regularly secure the services of Bell Helicopter in training their pilots and repair technicians. They solicited business in Texas by sending a representative to Houston to negotiate with Williams-Sedco-Horn. The record shows they regularly buy helicopters and spare parts in Texas and seek Texas services for training their employees. They directly secure the services of the Texas markets, maintain employees in Texas on a year-round basis and 26 times sent officials of their company to Texas. This activity has continued

since 1970. In this multi-million dollar business in Texas, Helicol has availed itself of the privileges and benefits of Texas law. In short, our petitioners seek to base jurisdiction on many significant contacts in Texas that reflect a continuous general presence in Texas.

The U.S. Supreme Court, in *World-Wide*, was addressing the jurisdictional problem between states. However, we do not have the same problem as *World-Wide*. We do not have a dispute over jurisdiction between coequal sovereigns in a federal system. We are deciding jurisdiction between countries; as to citizens of the United States and a resident of Colombia. Therefore, our "due process" application must be broader in scope.<sup>1</sup>

Now, let us look at what *World-Wide* said about "minimum contacts" and reasonableness of the "forum" among the states, and apply those tests to our facts:

The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their statutes as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, [326 U.S.] at 316, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057, quoting *Miliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed.

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<sup>1</sup> On September 17, 1982, after Helicol's motion for rehearing was filed, the Clerk of the Court advised West Publishing Company by letter that the language: "Therefore, our 'due process' application must be broader in scope" was removed from the opinion and the following language was substituted: "Therefore 'due process' in this case must be universal in its application."

278, 61 S. Ct. 339, 132 A.L.R. 1357 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U.S. at 317, 90 L. Ed. 95, 66 S. Ct 154, 161 A.L.R. 1057. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.* 355 U.S. 220, 223, 2 L. Ed.2d 223, 78 S. Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, [436 U.S.] at 92, 56 L. Ed. 2d 132, 98 S. Ct. 1690, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court*, [436 U.S.] at 93, 98, 56 L. Ed. 2d 132, 98 S. Ct. 1690.

444 U.S. at 291-92.

The contacts of Helicol in Texas were not "minimal," they were "substantial." It is not unreasonable to require a company with the expertise in international business, as Helicol, to defend a suit in a state where it has conducted multi-million dollars of business. However, it is unreasonable to require the widows and children seeking relief here to go to a foreign country to prosecute their action.

This Court has an interest in adjudicating the dispute of these United States citizens. They do not have the power to select another state but must be removed to a foreign country. This Court has an interest in assuring these plaintiffs obtain convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum country.

"Due process" is not a rigid, unchanging rule that courts could always determine by an unchanging formula. The concept of "due process" is designed to meet the test of change and to protect the rights of American citizens in the 1980's, as it did when the Constitution was written. In *World-Wide*, it was stated:

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee v. International Life Ins. Co.*, *supra*, at 222-223, 2 L. Ed. 2d 223, 78 S. Ct. 199, this trend is largely attributable to a fundamental transformation in the American economy:

"Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in *McGee*, of course, have only accelerated in the generation since that case was decided.

444 U.S. at 292-93.

The quote from *McGee* is as applicable to the facts of this case as it was to the *McGee* facts. It could be written: Today many commercial transactions touch two or more countries and may involve parties separated by continents or oceans. With this increasing internationalization of commerce has come a great increase in the amount of business conducted by mail and satellite communications across continental lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a country where he engages in economic activity.

The *McGee* court further stated: "Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing

which amounts to a denial of due process." 355 U.S. at 224. In my opinion, the inconvenience to Helicol, considering their substantial contacts in Tex., is certainly nothing which amounts to a denial of due process.

In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Supreme Court, in explaining the requirements of due process, stated:

The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but *it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.*

[Emphasis added].

357 U.S. at 253.

This Court, in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), tested the jurisdiction of Texas courts over the Oklahoma resident by stating:

[T]he contacts of Burt with Texas are minimal and fortuitous, and he cannot be said to have "purposefully" conducted activities within the State. Burt's contacts with Texas were not grounded on any expectation or necessity of invoking the benefits and protections of Texas law, nor were they designed to result in profit from a business transaction undertaken in Texas. The contract was solicited, negotiated, and consummated in Oklahoma, and Burt did nothing to indicate or to support an inference of any purpose to exercise the privilege of doing business in Texas. Simply stated, Burt was a passive customer of a Texas corporation who neither sought, initiated, nor profited from his single and fortuitous contact with Texas.

553 S.W.2d at 763.

Applying the *U-Anchor* test and using the *U-Anchor* language, I find Helicol's contacts are numerous and not fortuitous, as Helicol purposefully conducted activities within the state. Helicol's contacts with Texas were grounded on the

expectation, or necessity, of invoking the benefits and protections of Texas law; and they were designed to result in profit from a business transaction undertaken in Texas. The contracts and contacts were solicited or negotiated in Texas and some consummated in Texas. Helicol's activities, therefore, did more than indicate or support an inference of purposefully exercising the privilege of doing business in Texas. Helicol was an active customer of Texas corporation and companies who sought, initiated, and hopefully profited from its many and purposeful contacts with Texas.

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ROBERT M. CAMPBELL  
Justice

Justice McGee joins in this concurring opinion.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

**No. C-243**

ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.

("HELICOL"),

*Respondent.*

FROM HARRIS COUNTY, FIRST DISTRICT

**DISSENTING OPINION**

I respectfully dissent. The former dissenting opinion handed down July 21, 1982, is withdrawn. The survivors of four nonresidents who were killed in an airplane crash in the jungles of Peru, have sued the defendant Helicol in Houston, Texas. Helicol is a resident corporation of Colombia, South America. Neither the plaintiffs, the decedents, the defendant, nor the tort action have any connection with Texas. The court makes Texas the courthouse for the world, requiring only that the plaintiff show that the defendant had made purchases of supplies from some unrelated business located in Texas. I disagree with the court's opinion, because it is not grounded upon the correct facts and because our long-arm statute reaches only to "causes of action arising out of such business done in this State." TEX. REV. CIV. STAT. ANN. art. 2031b.

The court mistakenly says that Williams-Sedco-Horn, a Texas joint venture, was the party that contracted with the Peruvian owned oil company, Petro Peru. The opinion also says that the defendant Helicol negotiated and made its agreement with Williams-Sedco-Horn in Houston, Texas. The true

facts, as stated by the court of civil appeals are that Williams-Sedco-Horn was not the party who contracted either with the Peruvian oil company or with Helicol. The undisputed testimony was that Peru forbade a contract to construct the pipeline with any corporation unless it was a Peruvian company. The contract, written in Spanish and approved by the government, was with Peruvian-based Consorcio, not Williams-Sedco-Horn. The parties to the contract for the helicopters were Consorcio and Helicol. The court of civil appeals so found and enforced that finding by its further reference to paragraph 19 of the contract, which states, in the words of that court, "that all parties agree that Lima, Peru, is the residence for all related to the contract and that the parties submitted to the jurisdiction of Peru." The court of civil appeals made these other significant findings:

It [Helicol] does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

#### **Article 2031b Requires a Nexus to Business Done in This State.**

Article 2031b expressly requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction. The nexus requirement in Texas is found in the clear wording of the statute itself. Section 3 of article 2031b provides:

Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom

service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within the State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or nonresident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (emphasis added).<sup>1</sup>

Article 2031b was enacted in the wake of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which greatly expanded the jurisdictional potential of the various states. The Supreme Court reasoned in *International Shoe* that the exercise of jurisdiction over a nonresident defendant satisfies due process when the defendant has had "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316. This standard was broader in its effect than the "long-

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<sup>1</sup> Section 2 of article 2031b also requires a nexus, although this section was not the basis for exercise of jurisdiction in the present case. Section 2 provides:

When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendant's principal place of business by registered mail, return receipt requested.

TEX. REV. CIV. STAT. ANN. art 2031b, § 2 (emphasis added).

arm" statutes then employed in most states, including Texas.<sup>2</sup> Most states, like Texas, responded to the action of the Supreme Court by enacting statutes aimed at taking advantage of the expanded limits of potential jurisdiction. While the reach of a particular statute could always be coextensive with constitutional confines outlined by the Supreme Court, states were not compelled to assert jurisdiction that far. *See Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 440 (1952); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1264 (5th Cir. 1981). Some states took advantage of the full range of jurisdiction allowed. *See, e.g.*, FLA. STAT. ANN. § 48.081(5) (allowing jurisdiction over unrelated causes of action when a foreign corporation has a "business office" in the state and engages in the transaction of business there); WIS. STAT. ANN. § 801.05(1) (jurisdiction over unrelated causes of action permitted when an individual carries on "substantial and not isolated activities" in the state). *See also* UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02 (jurisdiction may be asserted as to unrelated causes of action when a defendant has his principal place of business in the state). Texas and other states wrote more restrictive stat-

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<sup>2</sup> Article 2031b became effective August 10, 1959. Prior to that time, Texas had no general jurisdictional statute. Instead, jurisdiction was based upon a nonresident motorist statute, TEX. REV. CIV. STAT. ANN. art. 2039a, and upon several statutes applying to nonresidents in specific circumstances, such as TEX. INS. CODE ANN. arts. 3.65, 3.66, 21.38 § 6; TEX. BUS. CORP. ACT ANN. arts 2.11, 8.10; TEX. NON-PROFIT CORP. ACT ANN. art 8.09; TEX. REV. CIV. STAT. ANN. arts. 2031, 2031a, 2032, 2033, 2033b. *See* Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long-Arm" Jurisdiction Statute; And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 304 n.165 (1964) [hereinafter cited as Thode].

utes. Texas included the requirement that the jurisdiction be limited to causes of action arising from local activity.<sup>3</sup>

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<sup>3</sup>The nexus requirement of article 2031b was contained in the original version of the act and has remained there unchanged since enactment. Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 747 (1976). The statute is thought to have been adapted from the 1947 Vermont "long-arm" statute, which also contains a nexus requirement. The pertinent portion of that statute provides:

If a foreign corporation makes a contract with a resident of Vermont to be performed in whole or in part by either party in Vermont, or if such foreign corporation commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed to be doing business in Vermont . . . and shall be deemed equivalent to the appointment . . . of the secretary of state of Vermont . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings . . . arising from or growing out of such contract or tort . . .

VT. STAT. ANN. title 12, § 855, quoted in Thode, *supra* at 305 n.167 (emphasis added). Other statutes adopted with similar provisions include: ILL. REV. STAT. ch. 110, § 17(1); MD. ANN. CODE, Courts and Judicial Proceedings, § 6-103; N.Y. CIV. PRAC. LAW § 302; OHIO REV. CODE ANN. § 2307.382. See also Precision Polymers, Inc. v. Nelson, 512 P.2d 811, 813 (Okla. 1973) (construing OKLA. STAT. title 12, §§ 187, 1701.03):

Under the above holding if it does not appear from the record that plaintiff's cause of action arises out of or is based upon the same acts of defendant alleged to confer jurisdiction in personam of the defendant, plaintiff may not invoke the provisions of § 187, *supra*, to acquire jurisdiction of defendant. This holding is in harmony with the language of § 187, which limits its application "to any cause of action arising, or which shall have arisen, from doing any" of the acts therein enumerated.

The Oklahoma statute requires a nexus notwithstanding the fact that the act has been construed to extend to constitutional limits. See Roberts v. Jack Richards Aircraft Co., 536 P.2d 353, 355 (Okla. 1975).

Jurisdiction statutes express the limits of a state's interest, in acquiring jurisdiction over nonresident defendants.<sup>4</sup> Article 2031b limits Texas' interest, to suits arising out of acts done in this state.<sup>5</sup> A desire to gain jurisdiction over nonresidents for

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<sup>4</sup>The United States Supreme Court has frequently looked to jurisdiction statutes to determine the extent of a state's expressed interest in acquiring jurisdiction over a particular lawsuit. In *Hanson v. Denckla*, 357 U.S. 235, 252 (1958), the Court distinguished the previous case of *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), by stating:

This case is . . . different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647-49; *Doherty & Co. v. Goodman*, 294 U.S. 623, 627; *Hess v. Pawloski*, 274 U.S. 352.

*See also* *Kulko v. California* Superior Court, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by, e.g., enacting a special jurisdictional statute."); *Iowa Electric Light and Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979); Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1345 (1980).

<sup>5</sup>This is another way of saying that the legislature has expressed an interest in providing a forum for state residents who are injured by activities of nonresidents performed within the state's boundaries, and to require that the nonresident bear the costs of injuries caused by their activities in the state. That these considerations were factors in the drafting of the provisions of article 2031b is reflected indirectly in one commentator's call for legislative action prior to the enactment of the statute. *See Wilson, In Personam Jurisdiction Over Non-Residents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363 (1957). The proposed draft of a statute included by Professor Wilson in his article contained a nexus requirement identical to the one found in article 2031b. This proposed draft is considered by some to have served as a model for the first five sections of the statute adopted by the legislature. Thode, *supra* at 303 n.151.

unrelated actions arising from activities outside the state is not reflected in the history of the statute or in the act's clear and unambiguous wording. Certainly, the legislature could have drafted the statute in language expressly extending its effect to the full extent permitted by the Constitution, as it did in TEX. FAM. CODE ANN. § 3.26 (permitting the exercise of jurisdiction over a nonresident respondent "if there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction"), or it could have left out the nexus requirement, as in TEX. BUS. CORP. ACT ANN. art. 8.10 (providing for service of process on foreign corporations authorized to transact business in the state). Absent such legislative action, however, we must enforce the clear provisions of article 2031b as presently written. *See generally* *Fox v. Burgess*, 157 Tex. 292, 297, 302 S.W.2d 405, 409 (1957); 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 46.04 (4th ed. 1973).<sup>6</sup>

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<sup>6</sup> It has been contended that the statute, article 2031b, was originally enacted to extend Texas "long-arm" jurisdiction to the full limits allowed after *International Shoe*, and that, if constitutional limits were actually broader than the legislature then believed, or if those limits have since been expanded, the statute's scope should likewise be enlarged in order to reach to the maximum extent possible. This argument is defective, however, for several reasons. First, article 2031b was enacted after *Perkins v. Benguet Consolidated Mining Co.*, *supra*, which held that states could, in rare instances, exercise jurisdiction over unrelated causes of action. 342 U.S. at 445-47. Second, even assuming that article 2031b was initially intended to be coextensive with due process, and due process was at that time believed to always require a nexus, we cannot assume that the drafters would have extended the statute to constitutional limits had the true limits been known, or when the limits were expanded. Perhaps the legislature was willing to extend article 2031b to constitutional limits only so long as a nexus was required. Finally, statutes drafted and enacted in other states near the time that article

Two prior opinions by this court hold that the nexus was required and in both cases, it was present. In *O'Brien v. Lanpar Company*, 399 S.W.2d 340, 342 (Tex. 1966), we upheld an Illinois default judgment against O'Brien, a nonresident Texas corporation whose president went to Illinois and employed the plaintiff as its attorney. We then stated this three-prong requisite for jurisdiction over a nonresident:

\* \* \* Such would appear to be: (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), was the next time this court wrote on this subject. U-Anchor, a Texas corporation, solicited a contract with defendant Burt in Oklahoma to place advertising displays at points along Oklahoma highways. Burt agreed to pay U-Anchor \$80.00 a month for 36 months and to make the payments at U-Anchor's office in Amarillo, Texas. We held that U-Anchor's cause of action against Burt satisfied the nexus required of article 2031b. We wrote that it was "connected with the contractual obligation assumed by Burt and partially performable in Texas." *Id.* at 762. We held, however, that Burt could not be sued in Texas because U-Anchor failed to satisfy

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2031b was written contained provisions authorizing the exercise of jurisdiction over unrelated causes of action in some cases, indicating that at least some legislatures had the idea that such an exercise of jurisdiction was constitutional. *See, e.g.*, MD. ANN. CODE, Courts and Judicial Proceedings, § 6-102; WIS. STAT. ANN. § 801.05(1).

the first and third requirements of *O'Brien*, *supra* at 763. As to the first requirement, we held that Burt's contacts with Texas were not purposefully conducted activities within Texas. Concerning the third requirement, we held that Burt's mailing of checks for payment to U-Anchor in Amarillo was a minimal contact. In contrast with those few contacts, we wrote that the solicitation, negotiation and consummation of the contract in Oklahoma showed that Burt might reasonably expect enforcement to be governed by Oklahoma rather than Texas law.

There is more reason here than in *U-Anchor* to deny Texas jurisdiction. The four plaintiffs worked for Consorcio. The contract fixed jurisdiction in Peru. Billings for work had to be made by Helicol to Consorcio in Peru. In *U-Anchor*, we held that Burt was no more than a passive customer of a Texas corporation, in that instance, the very party who was sued. In this case, however, Helicol has been pulled from Peru to Texas because it has been a customer of Bell Helicopter in Fort Worth. It had transactions with a company that in no way was connected with this litigation. *U-Anchor* is no support for the majority opinion.

The majority opinion disregards the statutory requirement that suit may be brought against a foreign corporation "upon causes of action arising out of such business done in this State."

The construction of article 2031b, here urged, conforms to that of the Fifth Circuit in several recent decisions. In *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), one defendant, Beech, had extensive contacts with Texas, all unrelated to the cause of action. These contacts were similar to Helicol's activities in Texas, but were much more extensive. For example, Beech entered into an \$11.1 million subcontract with Bell Helicopter in Fort Worth for the production of airframe assemblies, and had produced these for Bell continuously since 1967 under contracts exceeding \$72 million. *Id.* at 1270 n.19. In addition, Beech had two employees residing and conducting business in Texas. A local corporation wholly owned by the

defendant had sold and serviced aircraft manufactured by Beech. These contacts constituted "doing business" in Texas, but the court concluded that jurisdiction in Texas could not be asserted because the activities were unrelated to the cause sued upon. They did not have the " slightest causal relationship with the decedent's wrongful death." *Id.* at 1270.

In *Jim Fox Enterprises, Inc. v. Air France*, 664 F.2d 63 (5th Cir. 1981), the defendant, Air France, was doing "a thriving business in Texas." *Id.* at 65. It had a ticket office at Houston's Intercontinental Airport and a district sales office downtown. It listed six local telephone numbers in the Houston telephone directory, leased Texas real estate, employed Texas residents, and paid Texas employment and personal property taxes. Gross receipts from passenger ticket sales in Texas totalled in excess of \$59 million. Nevertheless, the court in *Jim Fox* recognized that article 2031b requires a nexus between the cause of action and the contacts with Texas, and that Air France's contacts, being unrelated to the cause of action, were insufficient to support jurisdiction.

In another case, *Placid Investments, Ltd. v. Girard Trust Bank*, 662 F.2d 1176 (5th Cir. 1981), it was undisputed that the defendant did business in Texas. As noted by the court, the defendant maintained bank accounts in Texas, owned Texas real estate, and received revenue from Texas sources. *Id.* at 1178. None of these contacts, however, "gave rise" to the cause of action. As a result, the Fifth Circuit concluded, the causal relationship or nexus requirement in article 2031b was not met, and jurisdiction could not be asserted.

#### Due Process

When a defendant has established a general business presence in the state, characterized by "substantial and continuous activity," that state may take jurisdiction over the defendant for unrelated causes of action. *Perkins v. Benguet Consolidated Mining Co.*, *supra* at 438, 445, 448; *O'Neal v. Hicks Brokerage Co.*, 537 F.2d 1266, 1268 (4th Cir. 1976); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 585-86 (1st Cir.

1970); *W. H. Elliott & Sons Co. v. Nuodex Products Co.*, 243 F.2d 116, 122 (1st Cir.), *cert. denied*, 355 U.S. 823 (1957). See also R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 145 (2d ed. 1980); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35(3) (1971).<sup>7</sup>

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<sup>7</sup> The reason for placing emphasis upon contacts related to the cause of action has to do with the need to show a state interest in assuming jurisdiction over the nonresident defendant. As explained in *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 346-47 (5th Cir. 1966): "There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives that State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum."

The United States Supreme Court had made it clear that a state's interest in subjecting a nonresident to its judicial jurisdiction is a fundamental factor to be considered in cases of this kind. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the interest of the state was obvious in that the suit was brought by the state itself, for unpaid taxes. In *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957), the validity of the exercise turned upon California's paramount interest in the litigation. The Court noted the state's manifest interest in protecting its residents, stating: "These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State." In *Hanson v. Denckla*, 357 U.S. 235, 251-52 (1958), the Court emphasized the absence of a substantial state interest, distinguishing *McGee*. The Court explained:

The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee International Life Ins. Co.*, 355 U.S. 220, and the cases there cited. In *McGee*, the nonresident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.

The term "substantial and continuous activity" has a distinct meaning when used in the context of due process. It suggests that the individual or corporate defendant is enough of an "insider" in the forum that he may be safely relegated to the state's political processes. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 87 (1980). Achievement of such a position requires more of the defendant than "minimum contacts." Instead, the defendant must establish some close substantial connection with the state approaching the relationship between the state and its own residents.\* It was upon such

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Contrary to this court's conclusion on rehearing that Texas has an interest in adjudicating this case because the plaintiffs are United States citizens, cases demonstrate that state interest in litigation is consistently derived from a state's desire to protect its own citizens and property and to effectuate its own regulatory policies. *See, e.g.*, *Blount v. Peerless Chemicals, Inc.*, 316 F.2d 695, 697 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963); *Compania de Astral v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). *See also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1343, 1345 (1980).

\* This relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principal place of business for the defendant. *See Seymour v. Parke, Davis & Co.*, *supra* at 587: "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have no question of the right of the state to subject the defendant to suit for unconnected causes of action." *See also* Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960 (1981); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35, comment e (1971): "The individual's activities in the State may . . . be so continuous and substantial as to justify the exercise of judicial jurisdiction over him as to causes of action arising from activities in other states. This is particularly likely to be true in a situation where the individual's principal place of business is in the State."

exception to the rule—the defendant's operating its corporate headquarters in the forum state—that the United States Supreme Court upheld the exercise of jurisdiction over an unrelated cause of action in *Perkins v. Benguet Consolidated Mining Co.*, *supra*.<sup>9</sup>

The court in this case has applied the "minimum contacts" standard. The error in this reasoning is that the nexus requirement is satisfied and becomes unnecessary, not upon a showing of "minimum contacts," but upon a demonstration of the defendant's *substantial* and *continuous* activity in the forum. Absent a showing of such activity, the nexus requirement becomes a highly significant factor. Texas should not assume jurisdiction over this case that involves nonresident plaintiffs and a nonresident defendant when the cause of action arises out of facts totally unrelated to the forum state.

A separate concurring opinion filed on rehearing contends that the "long arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due process than United States citizens, *cf. Plyler v. Doe*, 50 U.S.L.W. 4650 (1982); *Truax v. Raich*, 239 U.S. 33 (1915), it is nevertheless inconsistent with they way due process has been applied in previous cases. Although such a contention is rarely raised, cases dealing with jurisdictional issues invariably apply the same due process standards to citizens and noncitizens alike. *See, e.g., Jim Fox Enterprises v. Air France*, 664 F.2d

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<sup>9</sup> See *Seymour v. Parke, Davis & Co.*, *supra* at 587 (limiting *Perkins* to its facts); *Newton, Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980) ("The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.")

63 (5th Cir. 1981); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978); *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc. v. Cous- teau*, 495 F.2d 483 (5th Cir. 1974); *Bryant v. Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439 (1965). See also A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW vol. II at 22 (1973) (neither party's citizenship affects an American court's jurisdiction).

The court has established Texas as a "magnet" forum, drawing to its courts the trial of any lawsuit involving a defendant who has ever made purchases in Texas.

I would affirm the court of civil appeals.

JACK POPE  
Justice

Chief Justice Greenhill and Justice Barrow join in this dissent.

OPINION DELIVERED:  
October 6, 1982

SUPREME COURT OF THE UNITED STATES

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No. 82-1127

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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner,*

v.

ELIZABETH HALL, *et al.*,  
*Respondents.*

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ORDER ALLOWING CERTIORARI. Filed March 7, 1983.

The petition herein for a writ of certiorari to the *Supreme Court of Texas* is granted.

**CERTIFICATE OF SERVICE**

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this 12th day of May, 1983, served three copies of the foregoing Joint Appendix upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in a sealed envelope, first class postage prepaid, deposited at the United State Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

George Pletcher, Esq.  
Helm, Pletcher & Hogan  
2800 Two Houston Center  
Houston, Texas 77002

/s/

\_\_\_\_\_  
Thomas J. Whalen, Esq.

FEB 8 1983

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NO. 82-1127

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

HELICOPTEROS NACIONALES  
DE COLUMBIA, S.A.,  
*Petitioner*

v.

ELIZABETH HALL, et al.,  
*Respondents*

**BRIEF OF RESPONDENTS IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

Respondents, being dissatisfied with the presentation of Petitioner, submit the following:

1. Were the contacts and business activities of the non-resident defendant in Texas of such nature, extent and substance to justify the assertion of *in personam* jurisdiction by the Supreme Court of Texas?

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW .....	1
INTRODUCTION .....	1
OPINION BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL PROVISION INVOLVED .....	2
STATEMENT OF THE CASE .....	2
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	3
CONCLUSION .....	8
CERTIFICATE OF SERVICE .....	8

## TABLE OF AUTHORITIES

CASES	Page
Conn v. Whitmore, 342 P.2d 871 (Utah 1959) .....	7
Hanson v. Denkla, 357 U.S. 235 (1958) .....	5
International Shoe Company v. Washington, 326 U.S. 310 (1945) .....	5
Marshall Egg Transport Co. v. Bender-Goodman Co., 148 N.W.2d 161 (Minn. 1967) .....	7
Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437 (1952) .....	5
Rosenberg Brothers & Co. v. Curtis Brown Co., 260 U.S. 516 (1923) .....	6
Seymour v. Parke, Davis & Co., 423 F.2d 584 (1st Cir. 1970) .....	6
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 282 (1980) .....	5, 6, 7

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**BRIEF OF RESPONDENTS IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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**INTRODUCTION**

Respondents request this Court to deny the Petition for Writ of Certiorari filed herein by Petitioner.

**OPINION BELOW**

The final opinion, concurring opinion and dissenting opinion are reported at 638 S.W.2d 870 (Tex. 1982) and are reproduced in Petitioner's Appendix, 1a.

## **JURISDICTION**

Jurisdictional requirements are adequately set forth in Petition, p. 2.

## **CONSTITUTIONAL PROVISION INVOLVED**

It is Respondents' contention that the only constitutional provision involved is the due process clause of the Fourteenth Amendment which is set forth in the Petition, p. 2.

## **STATEMENT OF THE CASE**

The facts material to the question presented appear in the final opinion of the Supreme Court of Texas, Petitioner's Appendix 1A.

In Petitioner's statement of the case these inaccuracies should be noted:

- A. Williams-Sedco-Horn, decedents' employer, was not headquartered in Oklahoma, but in Houston, Texas.
- B. The statement that Helicol's officer had preliminary discussions in Houston, Texas about the contract is incorrect. The contract provisions were finalized and agreed upon at this meeting.

## **SUMMARY OF ARGUMENT**

Sufficient evidence and reasonable inferences thereon support the conclusions of the Texas Supreme Court that Petitioner was amenable to jurisdiction.

## ARGUMENT

### I.

Petitioner asserts that the non-resident's sole contacts with the State of Texas involved equipment purchases and a single contract discussion with decedents' employer in Texas. That assertion is simply not factually accurate. The Texas Supreme Court found the facts to be:

1. The contract which brought Respondents' decedents and Petitioner together was negotiated in Houston, Texas between Helicol and decedents' employer, Williams-Sedco-Horn.
2. Helicol purchased substantially all of its helicopter fleet in Fort Worth, Texas.
3. It did approximately \$4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of \$50,000 per month with Bell Helicopter Company, a Texas corporation.
4. It negotiated in Houston, Harris County, Texas, with a Texas resident, which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action (previously mentioned) and wherein Helicol agreed to obtain liability insurance payable in American dollars to cover a claim such as this.
5. It sent pilots to Fort Worth, Texas to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia.
6. It sent maintenance personnel and pilots to Texas to be trained.

7. It had employees in Texas on a year-round rotation basis.
8. It received roughly \$5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and
9. It directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question. (Involved leasing of a large helicopter capable of moving heavier loads for Williams-Sedco-Horn).

The Supreme Court then concluded that ". . . Helicol's numerous and substantial contacts do constitute 'doing business' in this state . . ." (Petitioner's App. p. 7a)

The concurring opinion properly adds to the factors just mentioned these matters:

1. They (Helicol) directly secure the services of the Texas markets.
2. Maintain employees on a year-round basis and 26 times sent officials of their company to Texas.
3. In this multi-million dollar business in Texas, Helicol has availed itself of the privilege and benefits of Texas law.
4. Helicol's numerous and purposeful activities in and contact with Texas were grounded on the expectation, or necessity, of invoking the benefits and protection of Texas law.

It appears that the Texas Supreme Court, the dissenting judges and petitioner are all in agreement that the United States Supreme Court has laid down certain basic principles:

1. Where a non-resident defendant's activities in the forum state are substantial and continuous, jurisdiction is permissible even if the cause of action arises from activities entirely distinct from its activities in the forum. *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437 (1952); *International Shoe Company v. Washington*, 326 U.S. 310 (1945).
2. Where a non-resident defendant's activities in the forum state are incidental, transitory and infrequent, jurisdiction is permissible if such activity gives rise to the cause of action. *International Shoe Company v. Washington*, 326 U.S. 310 (1945).
3. Where a non-resident defendant has no contacts, ties, or relations, the fact that the cause of action arises in the forum state does not permit assumption of jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 282 (1980).

Obviously, each case must turn upon its own facts. The Texas Supreme Court fully considered and correctly decided the issues in this case by a proper application of the law to the facts.

The facts demonstrated to the satisfaction of the Texas Supreme Court that Petitioner was doing business in Texas; so numerous, substantial and continuous were its activities there.

The evidence demonstrates that Petitioner injected itself into the business community of Texas and purposefully availed itself of the privilege of conducting activities there. *Hanson v. Denkla*, 357 U.S. 235, 253 (1958), and that it had enough clear notice that it was subject to suit there that it agreed to protect itself by procuring liability

insurance payable in American dollars. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

The Texas Supreme Court's opinion is in harmony with the three United States Supreme Court's decisions cited above.

## II.

The decision of the Texas Supreme Court in no manner conflicts with *Rosenberg Brothers & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923).

The two cases are, indeed, factually dissimilar. On the one hand, the only contact with the forum state was the purchase of goods—on the other—systematic, prolonged, substantial business dealings were conducted in the forum state which included purchases.

It is difficult to conceive that this case, being nothing more than a factual dispute, could have any effect on other litigants, much less international trade.

If an alien corporation wishes to protect itself against the assertion of jurisdiction, it need only limit its activities to mere purchases. However, having significantly entered the business community of a state as determined by the quality, substantiality, continuity and systematic nature of its activities it should expect to be subject to the jurisdiction of such state. *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 587 (1st Cir. 1970).

Helicol freely injected itself into the system of commerce in Texas. Having done so, it should "reasonably anticipate being haled into court there". *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 282, 297 (1980).

### III.

This case and the two cited by Petitioner are virtual opposites from a factual standpoint.

*Conn v. Whitmore*, 342 P.2d 871 (Utah 1959) involved a single transaction between a Utah resident and an Illinois resident—the purchase of a horse. The law applied by that court is in total accord with that applied by the Texas Supreme Court.

*Marshall Egg Transport Co. v. Bender-Goodman Co.*, 148 N.W.2d 161 (Minn. 1967) was a suit on breach of contract for the purchase of a load of eggs.

Jurisdiction was sought under that state's single act statute.

Its only similarity to this case is that a question of jurisdiction was involved.

### IV.

Petitioner asserts that a different test of due process under the Fourteenth Amendment was applied since Petitioner was an "alien corporation". Again, Petitioner is inaccurate. It attempts to utilize the language of a discarded and abandoned sentence in the concurring opinion. The opinion correctly holds that due process must be universal in its application.

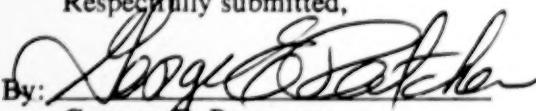
In proper context the concurring opinion was simply reiterating this Court's holding in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 282 (1980) concerning the importance of preserving the system of interstate federalism and that such was not a consideration when another country, rather than a co-equal sovereign state, is involved.

## CONCLUSION

For these reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

By:

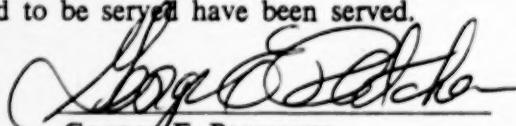
  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 1983 three copies of this Brief of Respondents in Opposition to Petition For A Writ of Certiorari were mailed, by first class mail, postage prepaid, to Hon. Thomas J. Whalen, 1030 15th St., N. W., Suite 720, Washington, D.C. 20005, counsel for Petitioner. I further certify that all parties required to be served have been served.

  
GEORGE E. PLETCHER

Office-Supreme Court, U.S.  
FILED

FEB 16 1983

No. 82-1127

ALEXANDER L STEVENS,  
CLERK

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

---

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner,*

v.

ELIZABETH HALL, *et al.*,  
*Respondents.*

---

BRIEF OF PETITIONER IN REPLY TO  
BRIEF OF RESPONDENTS IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF TEXAS

---

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## TABLE OF CONTENTS

	Page
ARGUMENT .....	1
CONCLUSION .....	6

## TABLE OF AUTHORITIES

CASES:	Page
<i>Conn v. Whitmore</i> , 9 Utah 2d 250, 342 P.2d 87 (1959) .	4
<i>Lakeside Bridge &amp; Steel Co. v. Mountain State Construction Co.</i> , 445 U.S. 907 (1980) .....	4
<i>Marshall Egg Transport Co. v. Bender Goodman Co.</i> , 275 Minn. 534, 148 Minn.2d 161 (1967) .....	4
<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437 (1952) .....	3

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

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No. 82-1127  
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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner*,  
v.  
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*Respondents*.

—  
**BRIEF OF PETITIONER IN REPLY TO  
BRIEF OF RESPONDENTS IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF TEXAS**

Petitioner Helicopteros Nacionales de Colombia, S.A. (hereinafter Helicol) hereby replies to the brief of respondents in opposition to the petition for a writ of certiorari.

**ARGUMENT**

While it is not the function of the Court to resolve factual issues, neither should the Court be influenced by misleading factual statements regarding Helicol's contacts with Texas.<sup>1</sup> For example, the impression is falsely created by respondents that Helicol had employees permanently based in Texas "on a year-round rotation

---

<sup>1</sup> Each of these misleading factual statements regarding Helicol's contacts with Texas is specifically addressed in the appendix hereto at pp. 79a-81a. The pagination of the appendix to this reply brief is continued sequentially from the appendix to the petition for writ of certiorari.

basis." Brief of Respondents in Opposition to Petition for Writ of Certiorari (hereinafter Respondents' Brief), p. 4; Appendix to Petition for Writ of Certiorari (hereinafter App. to Petition), p. 3a.

As the record shows,<sup>2</sup> however, the employees of Helicol to which the Supreme Court of Texas had reference were employees of Helicol who came to Texas from Colombia either to deal with Bell Helicopters about the purchase of helicopters, to pick up helicopters purchased from Bell or to take familiarization training in connection with the purchased helicopters. The only employees of Helicol who came to Texas for reasons unconnected with the purchase of Bell helicopters were Mr. Gonzalez who came to Texas in connection with a deposition in this case and Mr. Restrepo of Helicol who had a contract discussion with Williams-Sedco-Horn, which is discussed in both petitioner's and respondents' briefs and is referred to in the opinion of the Supreme Court of Texas.

The statement that Helicol "[h]ad employees in Texas on a year-round rotation basis" is therefore misleading.

The respondents have argued that Helicol's petition involves merely a factual issue which has been resolved in the court below adversely to Helicol, and that there is no real disagreement regarding the applicable law in this case.

However, to the contrary, respondents have in fact spotlighted the important legal issue which this Court should review, in the following manner:

---

<sup>2</sup> The record relating to the issue of employees of Helicol in Texas is set forth in the appendix hereto at pp. 82a-107a. Excluded from this record is the evidence and testimony relating to the single meeting which Mr. Restrepo of Helicol had with Williams-Sedco-Horn in Texas.

1. There is no dispute that this case involves a tort cause of action which did not arise from Helicol's contacts in Texas.
2. Respondents agree, citing *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), that where the cause of action does not arise from the contacts of the nonresident defendant in the forum state, *in personam* jurisdiction over the nonresident defendant can attach only if the defendant's contacts with the state are substantial and continuous. Respondents' Brief, p. 5.
3. Respondents agree that purchases in the forum state by an alien corporation cannot by themselves be a basis for *in personam* jurisdiction, at least with respect to a cause of action not arising from such purchases. Stated the respondents: "If an alien corporation wishes to protect itself against the assertion of jurisdiction, it need only limit its activities to mere purchases." Respondents' Brief, p. 6.
4. In concluding that "Helicol's numerous and substantial contacts do constitute 'doing business' in this state" (App. to Petition, p. 7a), the Texas Supreme Court relied on findings that Helicol "[p]urchased substantially all of its helicopter fleet in Fort Worth Texas;" "did approximately \$4,000,000 worth of business in Fort Worth, Texas from 1970 through 1976 as purchaser of equipment parts and services;" and sent employees to Texas for training on the purchased helicopters and to take delivery of the helicopters. App. to Petition, p. 3a.
5. If all the contacts of Helicol which relate to the purchase of Bell equipment are put aside, there remains only one contact of Helicol with Texas as discussed in respondents' brief, namely, a single contract discussion or negotiation in Texas between Mr. Restrepo of Helicol and Williams-Sedco-Horn.

Thus, the question before the Court is not one of factual resolution. The question is whether a single contract discussion or negotiation in Texas, or a single contract discussion or negotiation plus purchases from a Texas vendor constitute substantial and continuous activity in Texas, thereby constitutionally permitting Texas to require a nonresident defendant to defend in Texas a tort cause of action arising in Peru.

Respondents' comments on *Conn v. Whitmore*, 9 Utah 2d, 250, 342 P.2d 87 (1959) and *Marshall Egg Transport Co. v. Bender Goodman Co.*, 275 Minn. 534, 148 Minn. 2d 161 (1967) are reflective of the conflicts and confusion in the courts on the constitutional issue of *in personam* jurisdiction based upon contractual dealings between purchasers and sellers, even where the cause of action arises from the contractual dealings, as Mr. Justice White has pointed out in his dissent from the denial of a writ of certiorari in *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*, 445 U.S. 907 (1980).

If there is conflict on the issue of jurisdiction under a long arm statute where the cause of action arises from the contractual dealings within the forum state, the situation is even more urgent in cases such as the present case, where the cause of action did not even arise from the contractual dealings, namely, the discussion in Texas between Helicol and Williams-Sedco-Horn or the purchases by Helicol of helicopter equipment in Texas.

Respondents have missed the point concerning due process to be accorded to aliens. The concurring opinion of Justice Campbell, joined in by Justice McGee, was written in support of the decision and presumably was part of the rationale of the majority and for this reason was addressed by the dissenting justices. It was not until petitioner raised this point in its motion for a rehearing

that the language in Justice Campbell's opinion was changed from "[t]herefore due process application must be broader in scope" to "[t]herefore, due process in this case must be universal in its application." App. to Petition, p. 10a. This latter wording is a *nonsequitur*.

The issue petitioner wishes this Court to review is a legal issue of great importance:

Whether a nonresident alien corporation may constitutionally be subject to the jurisdiction of a Texas court on the basis of purchases made in the state and a single contract discussion or negotiation in Texas where the plaintiffs' causes of action did not arise from these contractual dealings in Texas.

As the dissenting justices of the Texas Supreme Court pointed out, the decision of the Texas Supreme Court establishes Texas "as a 'magnet forum', drawing to its courts the trial of any lawsuit involving a defendant who has ever made purchases in Texas." App. to Petition, p. 45a.

If foreign purchasers of American products are forced to defend foreign based causes of action, unrelated to their purchases of American products, this will inevitably have a detrimental effect upon United States export policy.

Purchases within a forum state, constitutionally and as a matter of policy, do not and should not constitute a basis for *in personam* jurisdiction over a nonresident defendant on a cause of action which did not arise from the purchases in the forum state.

**CONCLUSION**

For the reasons set forth above, and in the petition, petitioner urges that the petition for a writ of certiorari be granted.

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Dated: February 15, 1983

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CYNTHIA J. LARSEN

### **CERTIFICATE OF SERVICE**

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this 15th day of February, 1983, served three copies of the foregoing brief of petitioner in reply to brief of respondents in opposition to petition for a writ of certiorari to the Supreme Court of Texas upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in a sealed envelope, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

George Pletcher, Esq.  
Helm, Pletcher & Hogan  
2800 Two Houston Center  
Houston, Texas 77002

/s/ Thomas J. Whalen, Esq.

## **APPENDIX**

## INDEX TO APPENDIX

	Page
Chart Comparing Statements of Respondents with Record .....	79a
Transcript of Special Appearance Hearing Held February 28, 1978 .....	82a
Deposition of Charles James Novak February 10, 1978 .....	97a
Interrogatory No. 5 by Williams-Sedco-Horn addressed to Ben James Brown .....	102a
Interrogatory No. 8 by Williams-Sedco-Horn addressed to Helicol .....	103a

**APPENDIX**

The following chart compares the statements of respondents relating to contacts of Helicol in Texas with the record and the opinions of the courts below relating to such subject matter.

**Statement by Respondents**

1. The provisions of the contract between Helicol and Williams-Sedco-Horn were negotiated in Houston, Texas.
2. The contract between Helicol and Consorcio "brought respondents' decedents and Helicol together."
3. Helicol sent maintenance personnel and pilots to Texas to be trained.

**Reference from the Record**

The contract was not finalized or signed in the United States. *See Appendix to Petition*, pp. 66a-67a (Opinion of the Court of Civil Appeals).

No contract "brought respondents' decedents and Helicol together." Helicol's only contract was with Consorcio for transportation service in Peru. *See Appendix to Petition*, pp. 32a-33a (Opinion of the Supreme Court of Texas, Dissenting Opinion of Justice Pope).

Helicol pilots did not receive general training from Bell Helicopter Company in Texas but rather received specific instruction in the operation of the equipment which Helicol had purchased from Bell, which was included in the purchase price of the helicopters. Maintenance personnel were sent to Bell for instruction in connection with the purchased equipment. *See Appendix to Reply Brief*, pp. 96a-97a (Transcript of Special Appearance).

4. Helicol had employees in Texas on a year round basis. From 1970 to 1976 fourteen trips to Texas were taken by twelve Helicol employees for training and technical consultation with Bell Helicopter Company on Bell equipment. A total of fifteen employees made a total of nine trips to Texas from 1970 to 1976 to ferry Bell helicopters to Colombia. During the same period Mr. Restrepo made three trips to Texas. No Helicol employees were ever based in Texas. *See Appendix to Reply Brief, pp. 105a-107a (Helicol's Answer to Interrogatory No. 8 propounded by Williams-Sedco-Horn).*

5. Helicol directed First City National Bank of Houston, Texas, to make payments to Rocky Mountain Helicopters. Helicol issued no order to First City National Bank of Houston, Texas, and had no account there. *Appendix to Petition, p. 66a.*

6. Helicol directly secured services of Texas markets. In the context of the concurring opinion, the Supreme Court of Texas found a basis for jurisdiction in the fact that Helicol was attracted to Bell's market for helicopter equipment in Texas. *Appendix to Petition, p. 9a (Opinion of the Texas Supreme Court, concurring Opinion of Justice Campbell).* This is the issue in the case: Whether purchases from a Texas vendor can pro-

vide a basis for *in personam* jurisdiction.

7. Helicol sent officials to Texas on 26 occasions. All visits to Texas by Helicol employees, whether deemed to be "officials" or not, were visits to Bell Helicopter concerning purchases and related matters. *See Appendix to Reply Brief, App. pp. 105a-107a.*

8. In this multi-million dollar business in Texas, Helicol has availed itself of the privileges and benefits of Texas law. The "multi-million dollar business in Texas" consisted solely of purchases of helicopters and related training from Bell Helicopter.

9. Helicol's numerous and purposeful activities in and contact with Texas were grounded on the expectation, or necessity of invoking the benefits and protection of Texas law. The numerous and purposeful activities in and contact with Texas relate solely to the purchase of Bell equipment in Texas, except for the single meeting in Texas between Helicol and Williams-Sedco-Horn.

Transcript of Special Appearance Hearing  
Held February 28, 1978

**Testimony of Jorge Alberto Gonzalez**

**Mr. Goforth (Counsel for Helicol)**

The movant would call Jorge Alberto Gonzalez by deposition, taken on the 25th day of January, 1977, at the offices of Sewell, Junell & Riggs, before Diane S. Richer, notary public in and for Harris County, Texas, and being by me first duly sworn, testified by his oral deposition as hereinafter set out. . . .

**Transcript p. 6 line 23 through p. 7 line 7.**

\* \* \*

Q. "Would you state your full name, please, sir?"  
A. Yes; Jorge Alberto Gonzalez.  
Q. Mr. Gonzalez, would you state your address?  
A. My home address?  
Q. Yes, sir?  
A. Calle — C-a-l-l-e — 19, No. 1231, Bogota, Colombia.  
Q. You are a citizen of what country, sir?  
A. Colombia.

**Transcript p. 8 line 2 through p. 8 line 11.**

\* \* \*

Q. Are you employed by Helicol?  
A. Yes, sir.  
Q. You are paid by Helicol?  
A. Yes, sir.  
Q. Does your position as consejero require you to be in contact with the officers and employees of Helicol on a day-to-day basis?

A. Yes, sir.

Q. Do you advise the officers and employees of Helicol daily?

A. I would say yes.

Q. Do your functions or job require you to be familiar with all phases of the Helicol operations?

A. I would say yes, but mostly in connection with management policy rather than with the strictly technical aspect; the operations.

Q. Are you here today by agreement of the parties that you would come to Houston to give your deposition testimony?

A. Yes. I'm here because I was so instructed.

Q. By whom were you instructed?

A. Or requested to by the management of Helicol.

MR. PLETCHER (Attorney for Respondents): By whom, sir?

THE WITNESS: Management of Helicol.

Q. (By Mr. Goforth) Are you in Houston or in Texas for any purpose other than to attend this deposition and give your testimony?

A. No, sir.

Q. Have you been authorized by the management of Helicol to speak for Helicol today in giving your testimony?

A. I would say yes.

Transcript p. 11 line 8 through p. 12 line 19.

\* \* \*

Q. To you knowledge, sir, are any of the officers or directors of Helicol located inside the United States, or do they live inside the United States?

A. Officers or directors?

Q. Yes, sir.

A. No.

Q. Are any employees of Helicol located inside the United States?

A. No.

**Transcript p. 20 line 9 through p. 20 line 18.**

\* \* \*

Q. Mr. Gonzalez, does Helicol have any employees in Texas?

A. No, sir.

Q. Does Helicol ever perform any of its helicopter operations in Texas?

A. No, sir.

Q. Has Helicol ever recruited employees in Texas?

A. No, sir.

Q. Has it ever advertised for employees in Texas?

A. No, sir.

**Transcript p. 27 line 19 through p. 28 line 5.**

\* \* \*

Q. Has Helicol ever entered into a contract with anyone that provided for transportation wherein Helicol would provide transportation within the United States?

A. Within the United States, no.

**Transcript p. 31 line 8 through p. 31 line 12.**

\* \* \*

Q. "Mr. Gonzalez, have any of these contracts that you referred to awhile ago—I think you referred to one with Occidental and one with Texaco.

MR. PLETCHER: And Sunoco, Sun Oil Company.

Q. (By Mr. Goforth) And Sun Oil Company—have any of those been signed or negotiated in Texas?

A. No.

Q. Did any of those involve work to be performed by Helicol in the United States?

A. No.

Q. Did any of those involve work to be performed by Helicol in the United States?

A. No.

Q. Has Helicol ever performed any work in the United States?

A. No."

**Transcript p. 35 line 21 through p. 36 line 11.**

\* \* \*  
\* \* \*

**Testimony of Joesph W. Branson**

**By Mr. Graham (Counsel for Williams-Sedco-Horn)**

Q. Would you state your full name for the record please, sir?

A. Joseph W. Branson.

Q. Where do you live?

A. 6807 East 75th, Tulsa, Oklahoma.

Q. How old are you?

A. 62.

Q. What do you do for a living?

A. I am Administrative Manager for Williams Internation-  
al.

Q. What is Williams International?

A. An international pipeline construction company.

**Transcript p. 44 line 4 through p. 44 line 16.**

\* \* \*

Q. While you were in Houston at the offices of Williams-Sedco-Horn, did you ever receive any communication from someone who said they were a representative of Helicol?

A. I recall a telephone call two or three times from whom I presumed to be a woman in Los Angeles dunning me for collection of the Helicol invoices.

Q. Let's go back so I can understand what you told us. Who called you and where were you when you were called?

A. I was in Williams-Sedco-Horn office in Houston.

Q. How did that person identify herself?

A. I forget her name but she acted as a representative of Helicol and wanted to make collection of the invoice which we hadn't paid or we say at times would not have received the invoice from our Lima, Peru office.

Q. Did she have information that led you to believe she was who she said she was?

A. Yes, she would know the amount of the invoice.

Q. This wasn't just somebody that called in off of the street?

A. No, sir.

Q. Was her information accurate—"

MR. GOFORTH: I object. This is pure speculation as to anybody calling from Los Angeles or anywhere else.

THE COURT: I'll take your objection along with the case.

MR. GRAHAM: Continuing:

A. "Yes, we had not paid or the payment would be in transit.

Q. How many such phone calls did you receive?

A. I can't recall the exact amount, but three or four of them."

**Transcript p. 52 line 23 through p. 54 line 12.**

\* \* \*

**By Mr. Goforth (Counsel for Helicol)**

Q. This woman or whoever it was that called you, was it the same woman every time, or could you tell?

A. I thought it was.

Q. You couldn't really tell?

A. I can't recall.

Q. She was calling long distance? That is the one thing you are sure of, I guess?

A. Yes, sir.

Q. She wasn't calling from Houston?

Q. That is right.

Q. Did she tell you she was calling from where?

A. Los Angeles.

Q. She told you that?

A. Yes, sir.

Q. I don't guess you had any reason to believe that she was calling from anywhere in Texas?

A. No, sir.

Q. You don't know of any Helicol office in Texas, do you, sir?

A. No, sir.

Q. You don't know of any representative in Texas of Helicol?

A. No.

**Transcript p. 57 line 11 through p. 58 line 9.**

\* \* \*

**Testimony of Francisco Restrepo**

Q. Mr. Restrepo, would you state your name for the record, please, sir, and spell it, if you would?

A. My name is Francisco Restrepo, R-e-s-t-r-e-p-o.

Q. Mr. Restrepo, what is your address, sir?

A. My address is Calle Cententa 70 No. 6-76, Bogota, Colombia.

Q. Are you a citizen of Colombia?

A. Yes.

Q. Have you lived in Colombia your entire life?

A. Yes.

**Transcript p. 62 line 17 through p. 63 line 3.**

\* \* \*

Q. By whom are you employed, Mr. Restrepo?

A. By Helicol.

Q. What is your position with Helicol?

A. Manager.

Q. Tell us, if you will, what responsibilities you have as manager of Helicol?

A. I have to take care of the organization of the whole business of the company.

Q. Do you understand what chief executive officer is in the United States in the corporate terminology of the United States?

A. Yes.

Q. Are you the chief executive officer of Helicol?

A. I may say so.

**Transcript p. 63 line 19 through p. 64 line 8.**

\* \* \*

Q. Mr. Restrepo, in what country does Helicol operate?

A. Besides Colombia, Ecuador, Peru, some work in Brazil and Nicaragua.

Q. Has Helicol ever performed any work in the United States?

A. No.

Q. Has Helicol ever entered into a contract for the performance of any work in the United States?

A. No.

Q. Does Helicol have any offices in the United States?

A. No.

Q. I know this is a part of it, but I want to get it on the record, does Helicol have any offices in Texas?

A. No.

Q. To your knowledge, has Helicol ever had any offices in Texas?

A. No.

**Transcript p. 65 line 9 through p. 66 line 4.**

\* \* \*

Q. Had you had any prior dealings with Williams Construction Company? By you, I mean Helicol or Williams Brothers Construction Company.

A. What did you say?

Q. Had you had prior dealings or prior contracts with Williams Brothers?

A. Yes.

Q. Do you know where Williams Brothers is headquartered, sir?

A. Yes, in Tulsa, Oklahoma.

Q. Did you have what you considered to be a good relationship with Williams Brothers?

A. Yes.

Q. Did you know some of their officers and employees.

A. Yes.

Q. Where had you done work for Williams Brothers?

A. In Colombia and construction on the Trisalian Pipeline between the Corito Field and Pomaco, which is a Pacific port.

And later on in Ecuador, the construction of the Trans-Peruvian Pipeline—Trans-Ecuadorian Pipeline, excuse me.

Q. Had you ever done any work for Williams Brothers or Williams Construction Company in Texas?

A. No.

Q. Had you ever done any work for them in the United States?

A. No.

**Transcript p. 73 line 22 through p. 75 line 4.**

\* \* \*

**By Mr. Graham (Counsel for Williams-Sedco-Horn)**

Q. Mr. Branson testified that he was called by a woman that said she was a representative of Helicol asking when Helicol would be paid on certain invoices.

A. Who?

Q. Mr. Branson, who was the accountant in Houston for Williams-Sedco-Horn said he received telephone calls in Houston by a woman who said she was a representative of Helicol, asking when would Helicol be paid on certain invoices.

Have you understood my question?

A. Yes, I understand it, but I don't recall any woman at all. We don't have any woman represent Helicol in any place. [sic]

MR. GOFORTH: I think that adequately answers the question. But I want to enter an objection. I don't believe the testimony was as characterized by Mr. Graham.

THE COURT: The record speaks for itself. You'll have a chance to take him back.

Q. (By Mr. Graham) Did any representative of Helicol ever call Williams-Sedco-Horn in Houston inquiring about invoices?

A. No, not here. We don't have any representative in Houston at all.

Q. I'm not asking whether a Houston representative called, I am asking whether someone from Helicol telephoned Houston asking when the invoices would be paid.

A. I don't recall. No, not directly from my office. No.

Q. What about any of your other employees?

A. Maybe so, I don't know.

Q. It's certainly not out of the question, is it?

A. It's a possibility, yes.

Transcript p. 111 line 2 through p. 112 line 14.

\* \* \*

Q. I want to show you the one I want to look at. I will show you a document in the deposition upon written questions of Bell Helicopter. It appears to be a Telex No. 273 dated November

5, 1974. It's both in English and Spanish addressed to Mr. Jorge Gonzalez and it reads:

"Hernan De Los Rios Funcionario Helicol Llegara Esa Viernes 8. Hernan De Los Rios, Helicol officer, will arrive there Friday the 8th."

Meaning, I assume, Friday, the 8th of November. Can you tell us who Mr. De Los Rios is?

A. It's De Los Rios is second man in the maintenance activity of Helicol.

Q. Why was he going to Bell Helicopter four days after you had entered into an agreement to provide helicopters for Williams-Sedco-Horn?

A. I don't recall this, the reason for his travel.

Q. Was it related to the contract?

A. I don't recall.

Q. Is it possible?

A. I don't know. We have several people coming to the factory and back for many reasons. There is a possibility, but I don't know. I don't recall exactly.

Q. I understand that all of your helicopters or substantially all of your helicopters are purchased in Fort Worth?

A. Yes.

Q. And you have company people in Fort Worth almost all the time?

A. Not all the time, but often.

Q. When you left the meeting in Houston, did you call— you said you called Bell?

A. Yes.

Q. All right. Is one of the things that you did when you talked to Bell four days earlier or actually the day or a month

before this Telex was to make arrangements for Mr. De Los Rios to come up?

A. No. I don't think so, no.

Transcript p. 119 line 16 through p. 121 line 10.

\* \* \*

Q. I want to ask you, sir, about some answers to interrogatories.

Let me ask you a little more about your relationship with Bell Helicopter. All of your equipment, all of your helicopters are Bell equipment?

A. Mostly, yes.

Q. All of your pilots are trained in Fort Worth?

A. No.

Q. How many of your pilots are trained in Fort Worth?

A. Some and when we buy some new equipment, they train the pilots at the factory. Otherwise, we train in our own facility in Colombia.

Q. What about maintenance people, are they trained by Bell, too?

A. Some of them, yes.

Q. Of all of the training that your pilots and maintenance people get from Bell, they get in Fort Worth, Texas?

A. Some of it, because Bell has some groups traveling around and they are representatives Bell's in South America, Colombia, to train all the people.

Q. When we were talking about sending Helicol people back and forth between Bogota and Fort Worth, they were going up to see Bell for training?

A. Will you clarify the question, please?

Q. Let me ask it another way:

As a businessman, isn't one of your strong selling points, you understand me, about when you go into make a contract with an oil company, isn't it one of your selling points the fact that you use Bell equipment and you have factory trained pilots and factory trained maintenance people?

A. No. As a sales—no. No. We use any helicopter the client wants to use. Well, we are not mates, we are not like married with Bell.

Q. It doesn't hurt your business, though?

A. No. No, not at all. I am very pleased with the Bell equipment. But we will be able to operate any other type helicopter.

Q. It's true when you go to negotiate your deal with oil companies, you are very happy to tell them you have American trained pilots?

A. We have our own training facility and our pilots are very well known within the American and European companies.

Transcript p. 125 line 2 through p. 127 line 2.

\* \* \*

Q. Mr. Restrepo, also in the answers to interrogatories we asked your lawyers to tell us the names of Helicor people who were in the State of Texas during the last, I believe, five or six years. Your name is listed in the answer to interrogatories, that you were here December 11, 1975; September 12, 1973; and April 5, 1971, each time doing business with Bell Helicopters.\*

A. Buying equipment, yes.

---

\*The interrogatory and answer referred to by Mr. Graham are printed in full in this appendix at pp. 105a-107a.

Q. Did you talk to somebody about how to answer that interrogatory, did somebody ask you when you were in Texas so they could make this answer?

A. No. This is the first mention I hear of it. Maybe I have the record in the company. I don't know.

Q. My problem is that the answers about the number of times you were in Texas leaves out the meeting with Williams-Sedco-Horn. It's just not here. It happened in October of 1974. Do you have an explanation for why that meeting is left out when it got you here on three other dates?

A. No. Can you explain the question?

Q. We asked your company to tell us the dates its representatives were in Texas and they told us three different dates.

A. Who is "they"?

Q. Whoever prepared the answers on behalf of your company to our interrogatories. They do not list the meeting that you had with Williams-Sedco-Horn on October 4, 1974.

A. How was the question to the company?

Q. The question was from January 31, 1970, through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas and with regard to each please state the following, date, name and address of individual, reason for visit.

And part of the answer says Francisco Artego Restrepo, with your address, December 11, 1975; September 12, 1973; April 5, 1971, each time with business with Bell Helicopter.

And I want to know why in the answers to interrogatories we were not told about your trip to Houston and the meeting with Williams-Sedco-Horn.

A. I don't know. Officially I was invited to come to Tulsa. Maybe it's not in the records.

Q. Do you know who prepared the record?

A. Jorge Gonzalez.

Q. There is a full legal page of people who were in Texas during this period. Can you personally swear that there were not a whole lot of other people who likewise got omitted from your answers?

A. Say again?

MR. GOFORTH: That is improper.

THE COURT: Overrule the objection. I'm not sure it's of any big moment.

Q. (By Mr. Graham) Can you tell me what kind of training your people got at Bell, were they given training to become instructors for helicopter pilots so they could come back to Colombia and teach other people how to fly helicopters?

A. Most of our pilots come from the Colombian Air Force and they provide very good training, mostly in Bell equipment. So it's not a need to send the pilots out here and we specialize in some of our services that the factory cannot teach us how to do it, besides the general information. So we have our own instructors and we train our own people there. As soon as we buy a new equipment, we have the right to fly the helicopter for some time and receive some instructions. This is part of the deal when you buy helicopters.

Q. Is that included in the purchase price of the helicopter?

A. Yes.

Q. But you also paid Bell for additional training?

A. Not in pilots, for mechanics maybe. So all the major components, things like that.

Q. Do you pick up your helicopters at Fort Worth at Bell?

A. Yes.

Q. Do your pilots fly up here to Fort Worth, then fly the helicopter back?

A. Yes.

Transcript p. 130 line 9 through p. 134 line 8.

\* \* \*

**Cross Examination by Mr. Pletcher (Counsel for respondents)**

Q. What I want to be sure about is that we can rely upon the information that is already before the Court in the form of written questions to your company.

For example, there is a list of some thirty-three business trips to the State of Texas that did not include your trip here to secure the contract.

Now, do you know of any other business trips that Helicol people made to Texas for any reason at all, other than those answered in the written questions?

A. I don't know. I may say everything is there. Maybe it's some discrepancies.

Q. So far as you can tell us, as the general manager of that company, we can rely upon those answers?

A. Yes, sir, of course.

Transcript p. 134 line 22 through p. 135 line 14.

\* \* \*

MR. GRAHAM: So the record is correct, we would like to formally offer on the record the testimony that has been previously tendered to the Court, that is, the deposition of Charles James Novak, the interrogatories of Ben James Brown at Bell Helicopter Company; interrogatories submitted by Williams-Sedco-Horn and the answers to Helicol and Helicol's answers thereto the plaintiffs' interrogatories to Helicol, Interrogatory No. 75 and Helicol's answer to that.

And, the Court order ordering Helicol to produce the insurance policy called for by, I believe it's Paragraph 11, of the contract.

And we would like to note for the record the insurance policy has not been produced.

And the answers of Bell Helicopter Company to the plaintiffs' interrogatories.

THE COURT: 20 and 25?

MR. GRAHAM: Yes, sir.

MR. COFORTH: I would like to ask interrogatories, Bell Helicopter to the plaintiff and answers thereto, and 3, 13, 19, 20, 21, 36, 43 and 45.

THE COURT: They will be received.

**Transcript p. 216 line 15 through p. 217 line 25.**

\* \* \*

**Deposition of Charles James Novak**

**By Mr. Graham (Counsel for Williams-Sedco-Horn)**

- Q. What is your full name?
- A. Charles James Novak.
- Q. Where do you live?
- A. At 10184 Longmont, Houston.
- Q. What do you do for a living?
- A. I'm a professional engineer.
- Q. Who do you work for?
- A. Brown & Root, Inc.
- Q. How long have you worked for Brown & Root?
- A. Approximately six months.
- Q. What did you do before you worked for Brown & Root?
- A. I was employed by the Williams Companies in Tulsa, Oklahoma, for twelve years.

Q. What are the Williams Companies in Tulsa, Oklahoma?

A. The Williams Companies are a conglomerate corporation consisting of a foreign construction division, a pipeline transportation division, an agricultural plant, and food division.

Q. Have you ever been associated with a company or business called Williams-Sedco-Horn?

A. In September of 1974 I was appointed the general manager of Williams-Sedco-Horn to oversee the Houston office.

Q. Tell me what Williams-Sedco-Horn is or was.

A. Williams-Sedco-Horn was a joint venture organized to fulfill a contract for a crude oil pipeline from the jungles of Peru to the Pacific Ocean for Petro Peru, a state-owned oil company.

**Deposition Transcript p. 4 line 9 through p. 5 line 14.**

\* \* \*

Q. When you were in Peru, did you have a chance to meet any of the Helicol pilots?

A. I knew them all. I rode with them most of the time.

Q. To your knowledge did any of these pilots come to the state of Texas?

A. Some of them said they were going to.

Q. Where did they say they were going?

A. To Bell for training.

MR. GOFORTH: I object to that as hearsay.

Q. (By Mr. Graham) Was this at Fort Worth?

A. Yes.

Q. Had any of them told you they had been to Bell before?

A. I don't recall. Some of them said they were going.

MR. GOFORTH: I object to it as hearsay.

**Deposition Transcript p. 20 line 16 through p. 21 line 9.**

\* \* \*

Q. When you decided to use Helicol, did you consider the training of their pilots as one of the reasons you decided to use them, rather than the Peruvian air force?

A. When we looked at the job before we bid it, we rode with the Peruvian air force people and they were not very good. Basically, Peru or Latin America's attitude is "manana", so they are not going to do the work these other people will do and we couldn't afford to have a forty-percent operation when we needed a hundred-percent operation and Helicol could give us the hundred percent.

Q. Was it significant to you that Helicol had American-trained pilots?

A. They did not. They had Colombian pilots. They have been in business twenty-one to twenty-two years as a helicopter service company.

Q. They were Colombian Nationals, but they had been to Bell for training?

MR. GOFORTH: I object to that as leading.

MR. GRAHAM: Pass the witness.

**Deposition Transcript p. 24 line 12 to p. 25 line 10.**

\* \* \*

**By Mr. Goforth (Counsel for Helicol)**

Q. Now, how many times did you see Mr. Restrepo in the United States?

A. Only the one time.

Q. And he was here on this visit in October that you testified about?

A. Yes.

Q. That was the only time you ever saw him?

A. Yes.

Q. Now, have you ever seen anybody else from Helicol in Texas?

A. Not that I know of. No, sir.

Q. They might have, but you didn't see them?

A. They didn't come by and pay a special call to Williams-Sedco-Horn.

Q. Mr. Restrepo was the only person from Helicol that you ever saw in Texas while you were the general manager of the Williams-Sedco-Horn operation?

A. Right.

Q. The only person from Helicol that you ever saw in Texas was Mr. Restrepo?

A. Right.

Q. That was one time?

A. Yes.

Q. That was the meeting from 9:30 a.m. to 2:30 p.m. in October?

A. Approximately October.

Q. He was in and out?

A. Right.

**Deposition Transcript p. 29 line 20 through p. 30 line 23.**

\* \* \*

Q. Did you have continuous dealings with Helicol until the end of the contract period?

A. No, sir. The permits ran out on December 31, 1976, and all of the helicopters left the country.

Q. Up until that time, do you know of anybody else but Helicor that ever came to the United States?

A. No, sir.

Q. Did you deal with anybody from Helicor?

A. We did, down in Peru, all the time.

Q. Did you deal with them in Peru?

A. They had a manager of operations down there, just like myself, that took care of their business in Peru.

Q. What was his name, sir?

A. Oh, Lord—I can't tell you.

Q. Well, let me ask you this: Did he ever come to Texas?

A. Yes, he did. He came to Texas when he helped Rocky Mountain ferry the 214 down there.

Q. So, he was a pilot?

A. Well, he came as a ferry pilot. He came to someplace in the United States and I assume—I don't know where. I can't answer that, but he did come to help them ferry it down.

Q. So you don't know whether or not it was in Texas, just somewhere in the United States?

A. Right.

Q. Their headquarters were in Provo, Utah?

A. Right.

Q. He very easily could have gone to meet the helicopter in Provo, Utah?

A. Right.

Q. Do you know of any other occasion when he came to the United States?

A. No, not offhand. No.

Q. Any dealings that you had with him with regard to this contract were performed in Peru?

A. Yes. He came by the office all the time and we talked our problems out, first one thing and another.

Q. The fact of the matter is all of the dealings that you had with Helicol at any time with regard to this contract—

A. The operational part of it, right.

Q. —were in Peru?

A. Right.

MR. GOFORTH: I don't think I have any more questions.

**QUESTIONS BY MR. PLETCHER:**

Q. What I am trying to establish for my own purposes here for my client is what contacts Helicol had with the State of Texas and are you aware that Helicol bought its helicopters from Bell Helicopter in Fort Worth?

A. Only the fact that that's where Bell helicopters are made and as far as I know, that's the only source of sales.

Q. And that's the kind of helicopter they used?

A. Yes, the Bell 205.

Q. Are you familiar with the fact that helicopter pilots are trained at Fort Worth by the Bell Helicopter people?

A. Other than the pilots saying they were going to Bell for training.

**Deposition Transcript p. 36 line 21 through p. 39 line 11.**

\* \* \*

**Interrogatory No. 5 by Williams-Sedco-Horn addressed to Ben James Brown.**

**BEN JAMES BROWN**, the said witness, being duly sworn to testify the truth, the whole truth and nothing but the truth in

answer to the direct interrogatories as hereinafter indicated, deposes and says as follows:

No. 5. Have officials of Helicopteros Nacionales de Colombia, S.A. ("Helicol") ever met with officials of Bell Helicopter Company within the borders of the State of Texas?

ANSWER: Yes.

\* \* \*

**Interrogatory No. 8 by Williams-Sedco-Horn addressed to  
Helicol.**

8. From January 1, 1970 through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas, and with regard to each please state the following:

- a. Date;
- b. Name and address of individual; and
- c. Reason for visit

[Answer to Interrogatory No. 8.]

**Point No. 8**

**HELICOL PERSONNEL THAT HAS VISITED THE  
STATE OF TEXAS 1.970 to DATE.**

NAME	ADDRESS	DATE	PURPOSE OF VISIT
Capt. Agudel Francisco	Carrera 18 #106-73 Bogota.	April 6/70	Ferry air-craft to Colombia.
Capt. Carrasquilla Ricardo.	Trasv. 47 #101-A-55 Bogota.	Aug. 21/77	" "
Capt. Corredor Luis E.	Calle 37 #79-35 Bogota.	Aug. 21/77	" "
Capt. Gutierrez Jorge	Carrera 34 #94-53 Bogota.	April 14/70	" "
Capt. Gomez Mario	Diagonal 8a. #32-62 Girardot.	Dec. 14/73	" "
Capt. Diaz P. Abelardo	Carrera 56 #121-24 Bogota.	Jan. 13/74	" "
Capt. Diaz C. Miguel	Carrera 25 #31-74 Palmira (Valle)	April 14/70	" "

## POINT No. 8

## HELICOL PERSONNEL THAT HAS VISITED THE STATE OF TEXAS 1.970 to DATE.

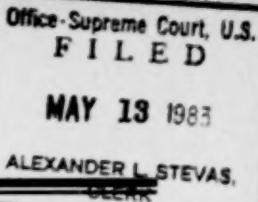
NAME	ADDRESS	DATE	PURPOSE OF VISIT
Capt. Kinderman B. Hans	Calle 87 #50-128 Barranquilla.	Jan. 13/74	Ferry air-craft to Colombia.
Capt. Martinez Gabriel	Calle 114 #27-79 Bogota.	Aug. 21/77	" "
Capt. Ovalle Esteban	Calle 47 Norte #5C-45 Cali (Valle)	Mar. 20/77	" "
Capt. Silva Luis Eduardo	Trasve.33 #119-03 Bogota.	Aug. 21/77	" "
Capt. Rivera Bernardo	Calle 32E #75B-24 Medellin.	Nov. 19/73	" "
Capt. Rincon Miguel	Trasv.13 Bis #127-17 Bogota.	April 6/70	" "
Capt. Jaime Pinzon	Calle 86 #7-86 Bogota.	Nov. 16/73	" "
Cap. Jaime Canal	Carrera 19 #82-58 Bogota.	Dec. 5/73	" "
Restrepo Ortega Francisco	Calle 70 #6-76 Bogota.	Dec. 11/75	Business with Bell Helicopter Co.
" " "	" "	Sept. 12/73	" " "
" " "	" "	April 5/71	" " "
Jorge Gonzalez	Calle 90 #12-31	Jan. 22/77	Legal Business
" " "	" "	Nov. 30/71	Plant familiarizational Bell Helicopter
Carlos Diaz	Calle 76 #38C-29 Barranquilla.	Sept. 10-72	Training with Bell Helicopter Co.
Josquin Escobar	Carrera 36 #82-27 Barranquilla.	Aug. 28/77	" " "

## POINT No. 8

## HELICOL PERSONNEL THAT HAS VISITED THE STATE OF TEXAS 1.970 to DATE.

NAME	ADDRESS	DATE	PURPOSE OF VISIT
Jaramillo Alfonso	Carrera 97 #34-13 Fontibon.	Aug. 7/77	Training with Bell Helicopter Co.
Molina Hector	Calle 32 #1-114 Neiva.	Aug. 28/77	" " "
Montoya Guillermo	Calle 76 #38C-55 Barranquilla	Feb. 13/77	" " "
Jimenez G. Carlos	Calle 56 #44B-45 Barranquilla	Feb. 13/77	" " "
Mosquera Jorge	Calle 79B #42E-51 Barranquilla	Feb. 15/77	Technical consultation with Bell Helicopter Co.
" "	" "	Sept. 19/76	" " "
" "	" "	Feb. 17/75	" " "
Rocha Miguel	Carrera 38C #74-132 Barranquilla	Sept. 1/72	Training with Bell Helicopter Co.
Rocha Rafael	Carrera 38 #63B-09 Barranquilla.	Aug. 7/77	" " "
Del Valle Plinio	88-06-Parson Blud Apt. A-12 Jamaica NYC-11432	Nov. 21/74	" " "
Luqueta Angel	Calle 53 B#21-44 Barranquilla.	Nov. 21/74	" " "

No. 82-1127



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

—  
HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner*,  
v.  
ELIZABETH HALL, *et al.*,  
*Respondents*.

On Writ Of Certiorari To The Supreme Court Of Texas

—  
**BRIEF FOR PETITIONER**  
—

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May 12, 1983

### QUESTIONS PRESENTED

1. Whether a Texas court constitutionally may assert *in personam* jurisdiction over a nonresident Colombian corporation where the plaintiffs' wrongful death actions arose out of a helicopter accident in Peru and where the Colombian corporation's sole contacts with Texas involved equipment purchases from a third party Texas corporation and a single contract discussion with decedents' employer in Texas and where plaintiffs' causes of action did not arise out of these contacts.
2. Whether the due process and equal protection clauses of the Fourteenth Amendment are violated by the exercise of *in personam* jurisdiction over a nonresident alien corporation under circumstances in which a nonresident United States corporation could not constitutionally be subjected to jurisdiction.

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL PROVISION INVOLVED .....	2
STATEMENT OF THE CASE .....	3
SUMMARY OF ARGUMENT .....	8
ARGUMENT .....	9
I. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BARS THE EXERCISE OF <i>IN PERSONAM</i> JURISDICTION OVER HELICOL IN THESE ACTIONS AS HELICOL HAS NOT ENGAGED IN SUBSTANTIAL AND CONTINUOUS CONDUCT OF ITS BUSINESS IN THE FORUM AND NO RELATIONSHIP EXISTS BETWEEN THE DEFENDANT THE FORUM AND THE LITIGATION .....	9
A. A Nonresident Defendant Must Have Sufficient Contacts With The Forum Such That The Assertion Of Jurisdiction Over It Is Fundamentally Fair .....	9
B. Specific Jurisdiction Is Not Present In The Case At Bar Because Petitioner's Contacts With Texas Did Not Give Rise To Respondents' Causes Of Action .....	11
C. Petitioner's Relationship With The State Of Texas Does Not Provide A Basis For The Assertion Of General Jurisdiction .....	12
1. The <i>Perkins</i> decision requires substantial and continuous forum activity and ties to the forum before general jurisdiction may be asserted .....	12
2. Purchases are a qualitatively inadequate contact upon which to premise general jurisdiction .....	14
3. Helicol's other contacts with Texas are insufficient to support general jurisdiction .....	17
D. Principles Of Federalism Embodied In The Due Process Clause Prohibit Texas From Asserting Jurisdiction Over Helicol .....	18

**Table of Contents Continued**

	Page
II. AN ALIEN NONRESIDENT CORPORATION IS ENTITLED TO THE SAME FEDERAL DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS ARE UNITED STATES CITIZENS AND TO THE EXTENT THE COURT BELOW HELD OTHERWISE ITS DECISION MUST BE REVERSED	21
III. THE DECISION OF THE TEXAS SUPREME COURT POSES A BARRIER TO INTERNATIONAL TRADE AS IT PERMITS THE ASSERTION OF JURISDICTION OVER A FOREIGN CORPORATION ON THE BASIS OF PURCHASES FOR CLAIMS ARISING OUT OF INCIDENTS OCCURRING OUT- SIDE THE UNITED STATES .....	23
CONCLUSION .....	25

## TABLE OF AUTHORITIES

CASES:	Page
<i>Conn v. Whitmore</i> , 9 Utah 2d 250, 342 P.2d 871 (1959)	15
<i>Henry R. Jahn &amp; Son, Inc. v. Superior Court</i> , 49 Cal.2d 855, 323 P.2d 437 (1958) .....	15
<i>Fourth Northwestern National Bank v. Hilson Industries, Inc.</i> , 264 Minn. 110, 117 N.W.2d 732 (1962) ..	15
<i>Hanson v. Denckla</i> , 357 U.S. 235 (1958) .....	11, 12
<i>Honeywell, Inc. v. Metz Apparatewerke</i> , 509 F.2d 1137 (7th Cir. 1975) .....	22
<i>Hutchinson v. Chase &amp; Gilbert, Inc.</i> , 45 F.2d 139 (2d Cir. 1930) .....	14
<i>Hutson v. Fehr Brothers, Inc.</i> , 584 F.2d 833 (8th Cir. 1978), cert. denied <i>sub nom. Fehr Brothers, Inc. v. Acciaierie Weissenfels</i> , 439 U.S. 983 .....	22
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) .....	<i>passim</i>
<i>Jim Fox Enterprises v. Air France</i> , 664 F.2d, 63 (5th Cir. 1981) .....	22
<i>Kulko v. Superior Court</i> , 436 U.S. 84 (1978) ....	8, 18, 23
<i>Milliken v. Meyer</i> , 311 U.S. 457 (1940) .....	10, 19
<i>Old Wayne Mutual Life Association v. McDonough</i> , 204 U.S. 8 (1907) .....	10
<i>Pennoyer v. Neff</i> , 95 U.S. 714 (1877) .....	10, 19
<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437 (1952) .....	<i>passim</i>
<i>Prejean v. Sonatrach, Inc.</i> , 652 F.2d 1260 (5th Cir. 1981)	22
<i>Product Promotions, Inc. v. Cousteau</i> , 495 F.2d 483 (5th Cir. 1974) .....	22
<i>Plyler v. Doe</i> , 102 S.Ct. 2382 (1982) .....	22, 23
<i>Rath Packing Co. v. Intercontinental Meat Traders</i> , 181 N.W.2d 184 (Iowa 1970) .....	15
<i>Rosenberg Brothers &amp; Co. v. Curtis Brown Co.</i> , 260 U.S. 516 (1923) .....	14, 15
<i>Rush v. Savchuk</i> , 444 U.S. 320 (1980) .....	8, 11
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977) .....	8, 11

## Table of Authorities Continued

	Page
<i>St. Clair v. Cox</i> , 106 U.S. 350 (1882) .....	10
<i>Tillay v. Idaho Power Co.</i> , 425 F. Supp. 376 (E.D. Wash. 1976) .....	16
<i>U-Anchor Advertising, Inc. v. Burt</i> , 553 S.W.2d 760 (Tex. 1977) .....	7
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	<i>passim</i>
CONSTITUTIONAL PROVISION & STATUTES:	
U.S. Const. Amend. XIV .....	2, 9
28 U.S.C. § 1257(3) (1976) .....	2
Tex. Rev. Civ. Stat. Ann. art. 2031b (1982) .....	7, 22
RULES:	
SUP. CT. R. 28.1 .....	2
OTHER AUTHORITIES:	
Annot., 12 A.L.R. 2d 1439 (1949) .....	16
Brilmayer, <i>How Contacts Count: Due Process Limitations in State Court Jurisdiction</i> , 1980 S.Ct. REV. 77 .....	12, 19
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von Mehren and Trautman, <i>Jurisdiction to Adjudicate: A Suggested Analysis</i> , 79 HARV.L.REV. 1121 (1966) 10-12	
M. Wolff, <i>Private International Law</i> , 62-3 (2d ed. 1950)	24

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**OPINIONS BELOW**

The final opinion of the Supreme Court of Texas appears in the joint appendix (hereinafter referred to as "J.A.") with the concurring opinion of Justices Campbell and McGee and the dissenting opinion of Justice Pope in which Chief Justice Greenhill and Justice Barrow joined.<sup>1</sup> (J.A. 184a-211a).

The final opinion of the Supreme Court of Texas is reported at 638 S.W.2d 870 (Tex. 1982). The opinion of

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<sup>1</sup> The initial opinion of the Supreme Court of Texas (which was withdrawn on respondents' motion for reconsideration) and the opinion of the Court of Civil Appeals of the State of Texas appear in the appendix to the petition for a writ of certiorari (hereinafter referred to as "P.A."). (P.A. 46a-57a, 63a-71a). The directive of the trial court, the District Court of Harris County, Texas, for an order denying petitioner's motion to dismiss on grounds of lack of *in personam* jurisdiction appears at J.A. 164a.

the Court of Civil Appeals is reported at 616 S.W.2d 247 (Tex. Ct. Civ. App. 1981).<sup>2</sup>

### JURISDICTION

On October 6, 1982, the Supreme Court of Texas denied petitioner's motion for reconsideration of its July 21, 1982 judgment. (P.A. 74a-75a). A petition for a writ of certiorari was filed on January 4, 1983, and was granted on March 7, 1983. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257(3) (1976).

### CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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<sup>2</sup> The following persons and entities were parties before the Texas Supreme Court: Elizabeth Hall, individually and as next friend of Delbert Hall, a minor; Susan Carol Porton; Harve Porton and Verda Ola Porton, individually and as next friends of Jeffery Taylor Porton, a minor; Naomi Lewallen, individually and as next friend of Ginger Lewallen, a minor; Gary Lewallen; Louise C. Moore (appellants); and Helicopteros Nacionales de Colombia, S.A. (appellee).

Helicopteros Nacionales de Colombia, S.A., is a Colombian corporation. Aerovias Nacionales de Colombia (known as Avianca) owns approximately 94 percent of Helicol's capital stock. The remainder of its stock is held by Aerovias Corporacion de Viajes and four South American individuals. Petroleum Helicopters de Colombia is a subsidiary of Helicol. SUP. CT. R. 28.1.

### STATEMENT OF THE CASE

On January 26, 1976, a helicopter owned by Helicópteros Nacionales de Colombia, S.A. (hereinafter Helicol) crashed in Peru. Respondents' decedents died in the accident. (J.A. 5a).<sup>3</sup> Respondents, decedents were United States citizens domiciled in states other than Texas. (J.A. 182a).<sup>4</sup> At the time of their deaths, they were employed by Consorcio and working in Peru in connection with Consorcio's contract with Petro Peru, the Peruvian state-owned oil company. (J.A. 100a, 185a). Under this contract, Consorcio was to construct a pipeline from the jungles of Peru to the Pacific Ocean. (J.A. 100a, 145a).

To perform the work on the Peruvian pipeline, Williams-Sedco-Horn, a joint venture made up of three American companies, with an office in Houston, Texas, had formed a consortium under Peruvian law which operated under the name "Consorcio," as Peruvian law forbade construction of the pipeline by a non-Peruvian company. (J.A. 12a, 158a, Ex. admitted, Transcript of Special Appearance Hearing pp. 216-17). Consorcio designated Lima, Peru, as its legal residence. (J.A. 12a, Ex. admitted, Transcript of Special Appearance Hearing p. 217).

Helicol is a Colombian corporation with its principal place of business in Bogota, Colombia, and is in the business of providing helicopter transportation in South America to oil and construction companies. (J.A. 11a, Ex. admitted, Transcript of Special Appearance Hearing p. 217, 30a, 32a, 57a).

Helicol was initially contacted in South America by a member of Consorcio, Williams International Sundamer-

<sup>3</sup> See also Petitions of Plaintiffs Susan C. Porton, *et al.*, Naomi Lewallen *et al.*, and Louise C. Moore, in the record of the court below.

<sup>4</sup> *Id.*

ica, Ltd. (hereinafter Williams), a construction company headquartered in Oklahoma. Helicol had previously done business with Williams in South America. (J.A. 62a-63a). Helicol was asked to send an officer to Tulsa, Oklahoma, to discuss a potential contract for helicopter services in Peru necessary for the construction of the pipeline. (J.A. 59a, 64a, 102a-103a). After the meeting in Tulsa, Helicol's officer, at Williams' request, flew to Houston, Texas, on Williams' corporate aircraft to meet with the other members of Consorcio. (J.A. 64a-65a, 104a-105a). Some preliminary contractual discussions occurred at the Houston meeting. (J.A. 65a-67a, 113a). Thereafter, a contract was finalized and signed in Peru on November 11, 1974, by Helicol's Peruvian lawyer and by a Peruvian resident representing Consorcio. (J.A. 113a, 120a-121a).

Prior to its execution, the contract had been approved by the Peruvian Air Force, as required by Peruvian law. (J.A. 61a-62a). It was written in Spanish on official government stationery and provided that the residence of all parties to the contract would be Lima, Peru, and further provided that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts. (J.A. 12a, Ex. admitted, Transcript of Special Appearance Hearing p. 217, 59a, 60a, 62a-63a). It also provided that Consorcio would make payments to Helicol's account with the Bank of America in New York City. (J.A. 15a, Ex. admitted, Transcript of Special Appearance Hearing p. 217, 68a)

In the record of the courts below, the following facts were not disputed:

1. Helicol has never performed any of its business or helicopter operations in Texas (J.A. 25a-26a, Ex. admitted, Transcript of Special Appearance Hearing pp. 216-17, 40a, 43a, 182a);

2. Helicol has never solicited any business in Texas (J.A. 40a, 41a, 158a);
3. Helicol has never sold any products that reached Texas (J.A. 57a, 182a);
4. Helicol has never been authorized to do business in Texas and has never had an agent for the service of process in Texas (J.A. 41a-42a, 58a);
5. Helicol has never had any employees based in Texas and has never recruited employees in Texas (J.A. 40a, 54a);
6. Helicol has never owned real or personal property in Texas (J.A. 22a, Ex. admitted, Transcript of Special Appearance Hearing pp. 216-17, 42a, 57a);
7. Helicol maintained no office or establishment for the purposes of making purchases within Texas or for any other purpose and maintained no records within Texas (J.A. 35a, 42a, 54a, 57a);
8. The contract between Helicol and Consorcio was executed in Peru to be performed in Peru (J.A. 25a-26a, Ex. admitted, Transcript of Special Appearance Hearing pp. 216-17, 42a, 67a);
9. Payment for helicopter services in Peru rendered to Consorcio was made to Helicol, pursuant to the contract terms, by deposit of funds in a New York bank specified by Helicol (J.A. 15a, Ex. admitted, Transcript of Special Appearance Hearing p. 217, 51a);
10. The only business transactions ever entered into in Texas by Helicol which were identified in the record below were the purchases of several Bell helicopters and associated equipment which included transitional training on the operational characteristics and maintenance requirements of the purchased equipment (J.A. 24a-25a, Ex. admitted, Transcript of Special Appearance Hearing pp. 216-17, 43a-44a, 90a, 93a-95a, 98a, 124a);

11. The tort causes of action sued upon arose out of a helicopter accident in Peru (J.A. 5a, 146a, 178a);

12. Neither respondents nor respondents' decedents were or are residents or citizens of Texas. (See generally J.A. 182a, 185a, 189a).

Respondents filed four wrongful death actions in the District Court of Harris County, Texas, claiming that negligence on the part of Helicol proximately caused the helicopter accident in Peru on January 26, 1976, in which respondents' decedents died. (J.A. 5a, 184a).

Helicol filed special appearances and moved to dismiss respondents' actions for lack of *in personam* jurisdiction. (J.A. 9a, 184a). After an evidentiary hearing, Helicol's motions were denied. (J.A. 164a). Respondents' actions were thereafter consolidated for trial and judgment subsequently was entered against Helicol in a jury verdict in favor of respondents. (J.A. 165a-174a). Bell Helicopter, the manufacturer of the helicopter involved in the action, was dismissed at the close of the respondents' case by directed verdict. (J.A. 167a).

On January 22, 1981, the Court of Civil Appeals reversed the judgment of the trial court and held that the trial court lacked *in personam* jurisdiction over Helicol. (J.A. 175a-183a).

On February 24, 1982, the Texas Supreme Court affirmed the decision of the Court of Civil Appeals. (P.A. 46a-62a). The respondents thereafter moved for reconsideration of the decision. The Supreme Court of Texas, on July 21, 1982, reversed itself, withdrew its earlier opinion and filed a second opinion reversing the judgment of the Court of Civil Appeals and affirming the decision of the trial court. (J.A. 184a-190a). Justice Campbell filed a concurring opinion in which Justice McGee joined. (J.A. 191a-197a). Justice Pope filed a dis-

senting opinion in which Chief Justice Greenhill and Justice Barrow joined. (J.A. 198a-211a). Helicol then moved for reconsideration which the Supreme Court of Texas denied on October 6, 1982, with three justices dissenting. (P.A. 74a-75a).

The Supreme Court of Texas, in reaching its decision that personal jurisdiction could properly be exercised over Helicol by the Texas trial court, determined that the Texas long-arm statute, Tex. Rev. Civ. Stat. Ann. art. 2031b (1982) (P.A. 76a-78a), permitted Texas courts to exercise jurisdiction to the fullest extent permitted by the Constitution, citing *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977).

This determination was disputed by the dissenting justices, who stated: "Article 2031b requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction." (emphasis in original) (J.A. 199a). The dissenting justices found that there was no such *nexus*.

The Texas Supreme Court went on to hold, however, that "Helicol's numerous and substantial contacts do constitute 'doing business' in this State and the trial court's actions do not offend due process." (J.A. 190a).

In his initial concurring opinion (J.A. 191a), Justice Campbell stated that federal due process with respect to *in personam* jurisdiction may be applied differently where the defendant is an alien resident of a foreign country rather than a United States citizen. (J.A. 193a). This rationale was challenged by Helicol in its motion for reconsideration and rejected by three of the justices of the Texas Supreme Court. (J.A. 210a-211a).

A petition for a writ of certiorari was filed by Helicol on January 4, 1983. The petition was granted on March 7, 1983. (J.A. 212a).

### SUMMARY OF ARGUMENT

The principles of *in personam* jurisdiction over non-resident defendants laid down by the Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), through *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), were violated by the Texas Supreme Court's decision upholding the exercise of *in personam* jurisdiction over Helicol in this case.

As a matter of due process, the exercise of jurisdiction over a nonresident corporate defendant has not been permitted unless the defendant was engaged in "substantial" and "continuous" business activity in the forum where the cause of action did not arise from the defendant's activities in the forum. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). Where the nonresident corporate defendant's activities in the forum were not substantial and continuous, due process has required that there exist a relationship between the defendant's activities in the forum and the cause of action as a constitutional minimum for the exercise of *in personam* jurisdiction. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Rush v. Savchuk*, 444 U.S. 320 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

Helicol's contacts with the State of Texas, which consisted of helicopter purchases from a Texas vendor, with transitional training of its employees on the use of the purchased products, and a single contract discussion within the state, do not constitute "substantial" or "continuous" business activity under *Perkins* to permit the assertion of jurisdiction over Helicol for a tort cause of action arising in Peru. Thus a relationship between Helicol's contacts with the forum and the cause of action is

required. As no such relationship exists, the decision of the Texas Supreme Court constitutes a denial of due process and must be reversed.

To the extent that the Texas Supreme Court's decision was based upon the view that the due process to be afforded an alien corporation is less than that enjoyed by a United States corporation, the decision below is violative not only of the due process clause of the Fourteenth Amendment but also of the equal protection clause and must be reversed.

## ARGUMENT

### I.

#### THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BARS THE EXERCISE OF *IN PERSONAM* JURISDICTION OVER HELICOL IN THESE ACTIONS AS HELICOL HAS NOT ENGAGED IN SUBSTANTIAL AND CONTINUOUS CONDUCT OF ITS BUSINESS IN THE FORUM AND NO RELATIONSHIP EXISTS BETWEEN THE DEFENDANT THE FORUM AND THE LITIGATION

##### A. A Nonresident Defendant Must Have Sufficient Contacts With The Forum Such That The Assertion Of Jurisdiction Over It Is Fundamentally Fair

The due process clause of the United States Constitution, which provides that no state shall deprive any person of "life, liberty or property without due process of law," limits the power of a state to assert *in personam* jurisdiction over nonresident defendants. *Pennoyer v. Neff*, 95 U.S. 714 (1877).

In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the Court held that constitutional due process requirements are satisfied when *in personam* jurisdiction is asserted over a nonresident corporate defendant which has "certain minimum contacts with [the forum] such that

the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " 326 U.S. at 316, quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

Prior to *International Shoe*, service of process on a defendant present within the forum was thought to be a prerequisite to the entry of a valid judgment against a defendant who was not a domiciliary of the forum. See generally *Pennoyer v. Neff*, 95 U.S. 714 (1877). If a corporate defendant had established a base of operations in the forum and was doing business there, through its agents, it was deemed to be "present" there, justifying the assertion of *in personam* jurisdiction over it, at least where the cause of action arose out of the defendant's activities in the state. See *Old Wayne Mutual Life Association v. McDonough*, 204 U.S. 8 (1907); *St. Clair v. Cox*, 106 U.S. 350 (1882).

*International Shoe* held that presence was no longer required for the exercise of *in personam* jurisdiction over nonresidents where the cause of action arose from forum contacts. Two lines of cases subsequently developed: (a) those involving the assertion of jurisdiction over a nonresident defendant because of the relationship or connection between the defendant's contacts with the forum and the cause of action sued upon, sometimes referred to as specific jurisdiction; and (b) those involving the assertion of jurisdiction over a defendant because of the relationship of defendant with the forum, whether or not the cause of action arose from defendant's forum contacts, sometimes referred to as general jurisdiction.<sup>5</sup>

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<sup>5</sup> See von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) (hereinafter referred to as von Mehren and Trautman).

A "relationship among the defendant, the forum and the litigation" has been the essential foundation of specific jurisdiction. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). See *Rush v. Savchuk*, 444 U.S. 320 (1980); *Hanson v. Denckla*, 357 U.S. 235 (1958). On the other hand, general jurisdiction has historically been premised upon the defendant's domicile or residence and to some extent "presence" in the jurisdiction, or his consent to be subject to suit in the jurisdiction.<sup>6</sup>

**B. Specific Jurisdiction Is Not Present In The Case At Bar Because Petitioner's Contacts With Texas Did Not Give Rise To Respondents' Causes Of Action**

It is undisputed that Helicol had some contact with the State of Texas. It purchased helicopters and spare parts from Bell Helicopter and its employees, on occasion, took delivery and received instructions on the purchased equipment in Texas. (J.A. 43a-44a, 90a, 93a-95a, 98a). In addition, a Helicol employee, a citizen and resident of Colombia, traveled to Texas to discuss a contract for helicopter transportation by Helicol in Peru. (J.A. 64a, 102a-105a).

However, respondents claims did not arise out of or relate to the purchases in Texas or to the contract discussion in Texas.<sup>7</sup> These claims arose out of the negligent

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<sup>6</sup>General jurisdiction is derived from defendant's relationship with the forum and not from the relationship between the cause of action and the forum. General jurisdiction has been premised upon three types of relationships with the forum: 1) domicile or habitual residence; 2) presence; or 3) consent. *von Mehren and Trautman* at 1137.

<sup>7</sup>A contact is "related to" the controversy or, as the concept is sometimes phrased, the cause of action "arises out of" defendant's contacts within the forum if the contact relates to a required element of plaintiff's case. See generally *Shaffer v. Heitner*, 433 U.S. 186

operation of a helicopter in Peru. Since the required link between Helicol's forum contacts and the cause of action is absent, there is no constitutional basis for specific jurisdiction. Thus the issue in this case is whether there is a basis for the exercise of general jurisdiction, namely Helicol's relationship or ties to the forum. This is the basis for jurisdiction relied upon by the Texas Supreme Court.

**C. Petitioner's Relationship With The State Of Texas Does Not Provide A Basis For The Assertion Of General Jurisdiction**

**1. The *Perkins* decision requires substantial and continuous forum activity and ties to the forum before general jurisdiction may be asserted**

The Court in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), held that a corporation may constitutionally be amenable to general jurisdiction within a state when it establishes a base of operations in the forum from which it conducts continuous and substantial corporate activity.

An evaluation of Helicol's contacts with Texas in light of the criteria enunciated in *Perkins* demonstrates that contacts sufficient to invoke the general jurisdiction of the Texas courts are entirely lacking in the case at bar.

In *Perkins*, the defendant, a Phillipine mining company, had been forced to abandon its operations in the Phillipines during World War II. Its president had re-

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(1977); *Hanson v. Denckla*, 357 U.S. 235 (1958). Simply because a contact may provide a link in a historical chain of events leading to the injury, it does not satisfy the "relatedness" criteria needed for the assertion of specific jurisdiction. See Brilmayer, *How Contacts Count: Due Process Limitations in State Court Jurisdiction*, 1980 S.C.T. REV. 77, 84. See generally *von Mehren and Trautman* at 1136, 1144.

turned to his home in Ohio where he conducted business on behalf of the company, drawing and distributing salary checks, using and maintaining two substantial bank accounts, receiving and preparing correspondence, holding directors' meetings in Ohio, supervising policies relating to the rehabilitation of the company and dispatching funds to cover the purchase of capital items. 342 U.S. at 447-48.<sup>8</sup>

The Court in *Perkins* quoted *International Shoe*, stating:

[T]here have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.

342 U.S. at 446, quoting *International Shoe*, 326 U.S. at 318.

Although the Texas Supreme Court did not cite *Perkins*, it implicitly invoked *Perkins* by holding that jurisdiction was properly asserted because "defendant's presence in the forum through numerous contacts is of such a nature . . . so as to satisfy the demands of the ultimate test of due process." (J.A. 188a).

Stated the Court:

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<sup>8</sup> As one commentator has characterized *Perkins*, "it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose. Admittedly in the case of corporate entities with major and continuous financial dealings in a state, the courts of that state may be tempted to find jurisdiction. Unless the cause of action arises out of contacts with the state, or unless a defendant is truly being sued in its own backyard, however, no jurisdiction should lie based on unrelated contacts." Newton, *Conflict of Laws*, 34 Sw. L. J. 385, 394 (1980).

Helicol's numerous and substantial contacts do constitute "doing business" in this State and the trial court's actions do not offend due process. (J.A. 190a).

**2. Purchases are a qualitatively inadequate contact upon which to premise general jurisdiction**

In contrast to the pervasive forum contacts present in *Perkins*, petitioner's Texas contacts consisted principally of purchases from Bell Helicopter Company. The question whether purchases within a forum provide a constitutional basis for the assertion of jurisdiction was addressed by the Court in *Rosenberg Brothers & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923). In *Rosenberg*, a pre-*International Shoe* case, the Court affirmed the lower court's decision that purchases within the forum did not constitute "presence" for the purpose of asserting jurisdiction, even where a cause of action arose out of the purchases. The Court stated:

[Appellee's] only connection with [the forum] appears to have been the purchase there from time to time of a large part of the merchandise to be sold at its store [in another state] . . . The only business alleged to have been transacted [in the forum] . . . related to such purchases of goods by officers of a foreign corporation. Visits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the State.

260 U.S. at 518. *See also Hutchinson v. Chase & Gilbert, Inc.*, 45 F.2d 139 (2d Cir. 1930) (L. Hand, J.).<sup>9</sup>

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<sup>9</sup> Respondents have themselves conceded that purchases cannot form the basis for *in personam* jurisdiction, stating: "If an alien corporation wishes to protect itself against the assertion of jurisdiction, it need only limit its activities to mere purchases." Brief of Respondents in Opposition to Petition for Writ of Certiorari, p. 6.

The fact that *Rosenberg* was decided under the pre-*International Shoe* "presence" test does not lessen its significance. The Court in *International Shoe* specifically commented on the nature of the contacts involved in *Rosenberg*, stating:

[A]lthough the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it [citing *Rosenberg*], other such acts, because of their nature and quality and circumstances of their commission, may be deemed sufficient to render the corporation liable to suit [citations omitted].

326 U.S. at 318.

Thus, the *International Shoe* decision implicitly affirmed the viability of the *Rosenberg* holding that purchases, because of their nature and quality, are not sufficient to permit the assertion of either specific or general jurisdiction.

Entering a state for the purpose of making sales and developing markets has been recognized as one of the "affiliating circumstances" justifying the exercise of specific jurisdiction. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 297-298 (1980). On the other hand, purchases of capital goods, or even inventory, in the forum for the purpose of conducting business elsewhere have usually been deemed insufficient to support specific jurisdiction. *See Rath Packing Co. v. Intercontinental Meat Traders*, 181 N.W.2d 184 (Iowa 1970); *Fourth Northwestern National Bank v. Hilson Industries, Inc.*, 264 Minn. 110, 117 N.W.2d 732 (1962); *Conn v. Whitmore*, 9 Utah 2d 250, 342 P.2d 871 (1959). *But see Henry R. Jahn & Son, Inc. v. Superior Court*, 49 Cal.2d 855, 323 P.2d 437 (1958).

Whether purchases in the forum are or should be "affiliating circumstance" justifying the exercise of specific jurisdiction, purchases by a nonresident from a forum vendor should not form a basis for general jurisdiction, absent some base of operation or presence in the jurisdiction such as existed in *Perkins*. This is especially true where, as here, the purchases were capital goods rather than inventory. The decisions which have held purchases to be a factor in determining whether the defendant was "doing business" were cases where the goods were purchased for resale and, for that reason, buying in the jurisdiction was considered by the courts in those cases to be doing business as much as selling. Annot., 12 A.L.R. 2d 1439 (1949).

General jurisdiction assumes permanent ties to the forum approaching domiciliary status. Purchases of products by nonresidents for use out of state does not create any ties with the state of purchase.

While the terms "doing business" and "presence" have been regarded as outdated concepts for purposes of specific jurisdiction, the concepts have validity where general jurisdiction is at issue. Corporate business activity has traditionally manifested itself by sales of goods and services, and sales have been an indicia of "presence" or "doing business." Purchases have not because they are usually incidental to a company's business activity. See *Tillay v. Idaho Power Co.*, 425 F.Supp. 376 (E.D. Wash. 1976).

An analysis of Helicol's purchases from Bell Helicopter Company demonstrates that the presence of Helicol's employees within the state was transient in nature. Helicol's purchases from Bell Helicopter were generally negotiated through Bell's agent in Colombia. (J.A. 98a). Helicol's employees traveled to Texas for the purpose of

receiving instruction on Bell equipment and to take delivery of the helicopters. (J.A. 94a-95a). From 1970 to 1976 only nine trips to Texas were taken by a total of fifteen Helicol employees to ferry Bell helicopters to Colombia. (J.A. 24a, P.A. 105a-107a, Ex. admitted, Transcript of Special Appearance Hearing pp. 216-17). During the same period, twelve Helicol employees took a total of fourteen trips to Texas for training and technical consultation in connection with the purchased equipment. (J.A. *id.*). Helicol had no employees whatsoever located or based in Texas. (J.A. 40a, 54a).

Helicol's business was providing helicopter transportation in South America. The purchases of capital items within the State of Texas were incidental to Helicol's helicopter transportation business. By these purchases, Helicol established no ties to the State of Texas. The presence of its employees was neither continuous or permanent. Helicol by these purchases was not "doing business" in the traditional sense of soliciting business and making sales. Helicol purchased capital equipment from Texas vendors in order to conduct its business elsewhere.

Apart from the policy reasons described on pages 23-24, *infra*, purchases in the forum by a nonresident create no ties with forum or presence justifying the exercise of general jurisdiction.

### **3. Helicol's other contacts with Texas are insufficient to support general jurisdiction**

Putting aside purchases as a basis for general jurisdiction, the Court is left with only a single contract discussion and the receipt by Helicol of payments in New York in the form of drafts drawn upon a Texas bank by Helicol. A single contract discussion cannot constitute the "continuous" and "substantial" business activity envisioned by *Perkins*.

The Texas Supreme Court's reliance upon Helicol's receipt of contractual payments drawn on a Texas bank as a basis for the exercise of *in personam* jurisdiction was also misplaced. Drafts forwarded by Consorcio from Texas to Helicol's bank in New York for deposit do not constitute payments made in Texas. For its part, Helicol had no bank account for receipt of payments within Texas. Furthermore, the election by Consorcio to draw upon a Texas bank for the purpose of making payments in New York was its own. The unilateral act of a third party or the other party to the action cannot provide the basis of personal jurisdiction over a nonresident. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 206 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978).

**D. Principles Of Federalism Embodied In The Due Process Clause Prohibit Texas From Asserting Jurisdiction Over Helicol**

The concept of "minimum contacts" sufficient to "satisfy traditional notions of fair play and substantial justice" performs the two essential due process functions:

It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 256, 292 (1980).

The two bases of jurisdiction previously discussed, specific jurisdiction based upon the relationship of the defendant's forum contacts with the controversy and general jurisdiction based upon defendant relationship with the forum, represent dual aspects of a forum's sovereignty.

In the first instance, a state may constitutionally assert jurisdiction over a cause of action arising out of activities within its borders. *See Pennoyer v. Neff*, 95 U.S. 714 (1877).

In the second instance, a state may constitutionally assert jurisdiction over its domiciliaries or entities which have, in effect, become forum domiciliaries. Requiring its own citizens to appear and defend on any cause of action constitutes an act of forum sovereignty which has been universally accepted. *Milliken v. Meyer*, 311 U.S. 457 (1940).<sup>10</sup>

Absent either of these forum "interests," the assertion of jurisdiction constitutes an affront to principles of federalism inherent in the due process clause.

In *World-Wide Volkswagen* the Court reiterated the importance of federalism;

[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution.

444 U.S. at 293.

The legitimate forum interests recognized by the Court in *World-Wide Volkswagen*<sup>11</sup> were fundamentally misap-

<sup>10</sup> It has been suggested that, when the defendant's contacts with the forum are "substantial and continuous," as in *Perkins*, concepts of fundamental fairness are not offended for the following reason. The defendant who is essentially being sued in his own back yard, is enough of an "insider" to be "safely relegated to the [forum] state's political processes." Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S.C.R. REV. 77, 87. For the same reason, fundamental fairness is not offended by the assertion of jurisdiction over a forum domiciliary.

<sup>11</sup> The Court in *World-Wide Volkswagen* indicated that the reasonableness of the burden on the defendant would be considered in light of other relevant factors, including the "forum state's interest

plied by the court below. The Texas Supreme Court found that the following forum interests would justify the assertion of jurisdiction: 1) Texas' interest arising out of respondents' status as United States citizens and the fact that their decedents were employees of a Texas resident;<sup>12</sup> 2) Texas' "interest in obtaining the most efficient resolution of controversies and in furthering fundamental substantive social policies"; and, 3) "Hall's genuine interest and desire in obtaining convenient and effective relief." (J.A. 189a).

The interests alluded to by the Texas Supreme Court constitute mere pretexts for the assertion of jurisdiction over Helicol. Neither respondents nor their decedents are or were Texas residents.

The Texas Supreme Court offered no support for its statement that Texas has an interest sufficient to justify the assertion of jurisdiction because it "seeks the most efficient resolution of controversies and the furtherance of social policies." Indeed, such vague and undefined interests could be said to be present in any case in which a state wished to assert jurisdiction.

Likewise, in every lawsuit the plaintiff has an interest in obtaining relief. Such an interest is of no jurisdictional consequence. The State of Texas has no recognizable

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in adjudicating the dispute . . . , the plaintiff's interest in obtaining convenient and effective relief . . . , at least when that interest is not protected by plaintiff's power to choose the forum . . . ; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental social policies" 444 U.S. at 292.

<sup>12</sup> This statement regarding decedent's employer is inaccurate. Decedents were employed by Consorcio at the time of their deaths. The legal residence of Consorcio was Lima, Peru. (J.A. 12a, Ex. admitted, Transcript of Special Appearance Hearing p. 217).

legal interest in a claim by nonresidents against a nonresident tortfeasor which arose in a foreign country.

In sum, Texas has no legally recognizable interest in this litigation, evidenced either by a connection to the parties or the controversy, sufficient as a matter of constitutional due process to compel petitioner to defend this lawsuit in Texas.

## II.

### **AN ALIEN NONRESIDENT CORPORATION IS ENTITLED TO THE SAME FEDERAL DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS ARE UNITED STATES CITIZENS AND TO THE EXTENT THE COURT BELOW HELD OTHERWISE ITS DECISION MUST BE REVERSED.**

Although it is difficult to be certain of all of the reasons underlying the Texas court's final decision, the justices who filed a concurring opinion on July 21, 1982 (J.A. 191a) indicated that in their view, an alien nonresident corporation enjoys less due process than a United States corporation. Thus, the concurring justices reasoned, in the case of alien corporations, "our due process application must be broader in scope." (J.A. 193a).<sup>13</sup> While the foregoing language was changed in the West Publishing Co. reports, pursuant to the instructions of the Clerk of the Texas Supreme Court to West Publishing Co. on September 17, 1982, to "due process in this case must be universal in its application," the dissenting justices commented on the original language as follows:

While this argument may appeal to those who believe that noncitizens should receive less due process than

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<sup>13</sup> The concurrences by Justices Campbell and McGee were necessary to form a majority in favor of the assertion of jurisdiction. Thus, it appears that this view of due process formed a partial basis for the final decision in favor of respondents.

United States citizens [citations omitted], it is nevertheless inconsistent with the way due process has been applied in previous cases. (J.A. 210a).

The view that aliens may be treated differently in due process terms than citizens, based simply on their alien status, has not found support in the courts of the United States. *See, e.g., Plyler v. Doe*, 102 S.Ct. 2382 (1982); *Jim Fox Enterprises v. Air France*, 664 F.2d 63 (5th Cir. 1981); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978), cert. denied *sub nom. Fehr Brothers, Inc. v. Acciaierie Weissenfels*, 439 U.S. 983; *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

In *Plyler v. Doe*, 102 S.Ct. 2382 (1982), the Court determined that the equal protection clause was offended by the unequal educational treatment provided to non-resident aliens by the State of Texas. At the outset, the Court affirmed that the due process clause extended to anyone, "citizen or stranger who is subject to the laws of a State," and that "all such persons or entities are entitled to the equal protection of the laws that a State may choose to establish." 102 S.Ct. at 2394.

The Texas legislature, in passing the long-arm statute under which jurisdiction was herein asserted, Tex. Rev. Civ. Stat. Ann. art. 2031b, did not distinguish between United States citizens and foreign nationals. Thus, for the Texas Supreme Court to have utilized such a distinction constitutes a denial to petitioner of the equal protection of the laws.

Furthermore, if the Texas statute did permit aliens to be treated differently than United States citizens, the equal protection clause would be offended as it requires

that such discriminatory state action bear some fair relationship to a legitimate public purpose. 102 S.Ct. at 2394.

Any legitimate public purpose to be served by such a classification, would require, if anything, that nonresident aliens be protected from such jurisdiction. The burden on the defendant, a critical factor in any due process analysis, will generally be more onerous if the defendant is forced to cross national boundaries, rather than merely state borders, in order to defend. *See generally Kulko v. Superior Court*, 436 U.S. 84, 97 (1978).

Alien status, rather than being a factor permitting due process to be more easily satisfied, will more likely dictate a contrary conclusion.

### III.

#### **THE DECISION OF THE TEXAS SUPREME COURT POSES A BARRIER TO INTERNATIONAL TRADE AS IT PERMITS THE ASSERTION OF JURISDICTION OVER A FOREIGN CORPORATION ON THE BASIS OF PURCHASES FOR CLAIMS ARISING OUT OF IN- CIDENTS OCCURRING OUTSIDE THE UNITED STATES**

The decision of the Texas Supreme Court is not only repugnant to the Constitution but is unsound for policy reasons as well. The United States must compete in an increasingly less favorable international marketplace to sell its products to foreign purchasers. If mere purchases can form the basis for *in personam* jurisdiction where the cause of action asserted not only arises in a foreign country but is also unrelated to the purchases, American producers will be forced to bear the cost of such jurisdiction. American products may well become less competitive for they will come with a "hidden cost," *i.e.*, the cost of defending litigation in American courts, a cost foreign purchasers may be unwilling to pay.

The American judicial system will not be well-served by the assumption of general jurisdiction over alien corporations based on their purchases of American products. Assertions of jurisdiction on a basis as tenuous as purchases will inevitably yield judgments unenforceable in other countries.<sup>14</sup> Absent an applicable international treaty or the presence of defendant's assets within the jurisdiction, judgments against alien nonresident defendants are generally enforceable only on the basis of international comity. It is doubtful whether the United States would enforce a judgment entered in a foreign country where general jurisdiction was founded purely on the basis of purchases within that country.

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<sup>14</sup> International law principles generally dictate that a defendant must be sued in his own forum. This principle is expressed in the Roman law maxim, *actor forum rei sequitur* (the plaintiff must pursue the defendant in his forum). See M. WOLFF, PRIVATE INTERNATIONAL LAW 62-63 (2d ed. 1950).

## CONCLUSION

For the reasons set forth above, the judgment of the Supreme Court of Texas should be reversed and the cause remanded with instructions to dismiss the actions for lack of jurisdiction.

Respectfully submitted,

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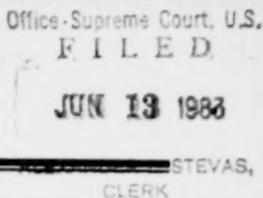
**CERTIFICATE OF SERVICE**

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this twelfth day of May, 1983, served three copies of the foregoing Brief of Petitioner upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

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Houston, Texas 77002

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THOMAS J. WHALEN, ESQ.



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NO. 82-1127

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

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HELICOPTEROS NACIONALES  
DE COLOMBIA, S. A.,  
*Petitioner*

v.

ELIZABETH HALL, et al.,  
*Respondents*

---

On Writ Of Certiorari To The  
Supreme Court Of Texas

---

BRIEF OF RESPONDENTS

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**QUESTION PRESENTED**

Whether the non-resident Colombian Defendant had sufficient contacts, ties and relations with Texas to make the exercise of jurisdiction fair and reasonable and inoffensive to traditional notions of fair play and substantial justice.

## SUBJECT INDEX

	Page
QUESTION PRESENTED .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF ARGUMENT .....	8
ARGUMENT .....	10
I. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT BAR THE EXERCISE OF IN PERSONAM JURISDICTION OVER PETITIONER FOR CONTACTS WITH THE STATE OF TEXAS ARE SUBSTANTIAL AND CONTINUOUS AND MEET MINIMUM CONTACTS REQUIREMENTS. ....	10
II. REGULAR PURCHASES BY A NON-RESIDENT WITHIN THE FORUM STATE ARE RELEVANT TO THE QUESTION OF MINIMUM CONTACTS AND AFFILIATING CIRCUMSTANCES. ....	11
III. THAT A CAUSE OF ACTION IS ENTIRELY UNRELATED TO THE NON-RESIDENT DEFENDANT'S CONTACTS WITH THE FORUM STATE DOES NOT FORECLOSE THE ASSUMPTION OF JURISDICTION. ....	14
IV. MINIMUM CONTACTS SERVE TWO RELATED BUT DISTINGUISHABLE FUNCTIONS. ....	15
V. IT IS REASONABLE AND FAIR UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE THAT PETITIONER BE SUBJECT TO THE JURISDICTION OF TEXAS. SUCH JURISDICTION DOES NOT OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE. ....	16
CONCLUSION .....	21
CERTIFICATE OF SERVICE .....	22

## III

## LIST OF AUTHORITIES

CASES	Page
Hanson v. Denckla, 357 U.S. 235, 250 (1958) .....	16
Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 323 P.2d 437 (1958) .....	11
International Shoe Co. v. Washington, 326 U.S. 310 (1945) .....	10, 15, 17, 19, 20
Kirkpatrick v. Texas & P. Ry. Co., (2 Cir.) 166 Fed. 2d 788 (1948) .....	17
Kulko v. Superior Court of California, 436 U.S. 84 (1978) .....	16, 19, 20
McGee v. International Life Insurance Company, 355 U.S. 220, 223 (1957) .....	17, 19
Perkins v. Benguet Consolidated Mining Company, 342 U.S. 437 (1952) .....	10, 14, 16, 20
Rosenberg Brothers & Company v. Curtis Brown Company, 260 U.S. 516 (1923) .....	11
Rush v. Sanchuk, 444 U.S. 320, 332 (1980) .....	10
Shaffer v. Heitner, 433 U.S. 186, 211 (1977) .....	10, 18
Tillay v. Idaho Power Company, 425 Fed. Supp. 376 (E.D. Washington 1976) .....	12, 13
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) .....	8, 10, 12, 15, 16, 19, 20

## MISCELLANEOUS

von Mehren & Troutman, <i>Jurisdiction to Adjudicate; A Suggested Analysis</i> , 79 Harv. L. Rev. 1121, 1173-1174 (1966) .....	18
Professor Brilmayer, <i>How Contacts Count: Due Process Limitations in State Court Jurisdiction</i> , 1980 S.Ct. Rev. 77, p. 108 .....	18

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*Petitioner*

v.

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*Respondents*

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On Writ Of Certiorari To The  
Supreme Court Of Texas

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**BRIEF OF RESPONDENTS**

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**STATEMENT OF THE CASE**

Because the job of constructing the Petro-Peru Pipe Line was so large, Petro-Peru requested that three of the individual bidding companies re-submit a joint bid for the project. Thus, was born Williams-Sedco-Horn, a joint venture.<sup>1</sup> (J.A. p. 101a). Its main office and domicile was in Houston, Texas. (J.A. p. 51a; 119a-120a).

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1. Williams-Sedco-Horn is a joint venture composed of Williams International Sundamerica, Ltd., a Delaware corporation headquartered in Tulsa, Oklahoma, Sedco Construction Corporation, a Texas corporation, and Horn International, Inc., a Texas corporation.

It was essential for the job to have transportation of men, material and equipment by helicopter. The management committee of Williams-Sedco-Horn discussed the feasibility of buying helicopters (J.A. 115a); leasing them or sub-contracting such work. (J.A. 120a). Representatives of Sedco and the Horn company discussed rates with another company, Petroleum Helicopters. (J.A. 109a). A Williams' representative recommended Petitioner, with whom it had previous experience. (J.A. 103a). This was a lucrative contract and Petitioner was not the only helicopter company trying to get the job. (R. 181).

The management committee, therefore, requested the Williams' representative (Littlejohn) to go to Petitioner and see what he could get them for; to see if they could get the machines; see what kind of deal he could put together; look into and get all the background on Petitioner and find out what they could furnish and let the management committee meet him face to face. (J.A. 115a).

Accordingly, Helicol's Chief Executive Officer (J.A. 56a) came to Houston<sup>2</sup> and met with the management committee of Williams-Sedco-Horn. There was a discussion of prices, availability, working conditions, fuel supplies and housing. (J.A. 112a). Petitioner, through its Chief Executive, guaranteed that it could have the first helicopter on the job in fifteen (15) days. (J.A. 108a; J.A. 116a). He quoted rates, (J.A. 117a), delivery dates, (J.A. 118a) and satisfied everyone he could deliver. A

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2. In Petitioner's Brief, p. 4, and in the Amicus Brief of the United States, p. 2, it is erroneously stated that negotiations between Petitioner and Williams Bros. International took place in Tulsa, Oklahoma. Petitioner's Chief Executive, Mr. Restrepo, testified that he and his wife spent the night in Tulsa, but had no meeting nor negotiations about the contract with Williams-Sedco-Horn. Those negotiations took place in Houston the following day. (J.A. 73a).

vote was taken to accept the proposition from Petitioner's Chief Executive. (J.A. 118a). The parties were all represented at this meeting and shook hands on it and made the deal. (J.A. 162a).

There is no doubt that both Petitioner and Williams-Sedco-Horn reached agreement at the Houston meeting for Petitioner was performing on the contract before it was formerly executed in Peru. (J.A. 79a).

Even before the meeting in Houston, Petitioner had ties, contacts and relations in the State of Texas, evidenced by:

- (1) Purchase of ships, spare parts, accessories and training from 1970 through 1973. (J.A. 135a).
- (2) The helicopter which crashed was delivered to authorized representatives of Petitioner in Fort Worth, Texas, on or about April 10, 1970, following negotiations by telephone, telegram and in person in Fort Worth between Bell Helicopter and Petitioner's Chief Executive, Mr. Restrepo, and Executive Vice President, Mr. Pretelt. (J.A. 123a-124a).
- (3) A \$773,065.54 promissory note from Petitioner to Bell Helicopter Co. was executed on April 2, 1970. (J.A. 128a-129a).
- (4) Petitioner sent its consultant to management, Jorge Gonzalez, for plant familiarization to Bell Helicopter Co. in November, 1971 in Fort Worth, Texas. (J.A. 18a; App. 106a Pets. Res. to Resp. Opp. to Pet. for Cert.).<sup>3</sup>

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3. Although Petitioner designated for inclusion in the joint appendix all of the Interrogatories of Williams-Sedco-Horn to Helicol and Answers thereto, somehow the answer to Interrogatory No. 8 was not included. It is contained in Petitioner's Brief in Reply to Respondents' Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Texas. (pps. 105A-107A).

(5) Petitioner's Chief Executive communicated with Bell Helicopter in Fort Worth on October 19, 1974, that:

"Operations seriously affected by lack of chains. We have obligations contracted with oil companies and cannot non-comply. Please ship immediately balance."

Mr. Restrepo was doubtful that this was related to the Williams-Sedco-Horn contract. (J.A. 89a). Work was being done at that time by Petitioner for Occidental Petroleum and Atlantic Richfield. (J.A. 89a).

(6) Mr. Restrepo notified Bell Helicopter in Fort Worth on October 24, 1974, of Petitioner's participation in a company being formed with a group of distinguished Peruvians and confirming the purchase of two Bell 205 A-1 helicopters. This business in Texas had nothing to do with the Williams-Sedco-Horn contract. (J.A. 88a).

(7) One of its officers went to Fort Worth on November 4, 1974, but Petitioner's Chief Executive did not recall if this was related to the Williams-Sedco-Horn contract as Petitioner had several people coming to the factory and back for many reasons. (J.A. 87a).

(8) Negotiations were ongoing between Petitioner and Bell Helicopter Co. for Petitioner to become a designated Bell repair facility in the country of Colombia. (J.A. 90a).

(9) Ten of its captains were sent to Fort Worth to ferry ships back to South America from 1970 thru January of 1974. (App. 105a-106a Pets. Res. to Resp. Opp. to Pet for Cert.).

Subsequent to the Houston meeting and the agreement on the contract, Petitioner's activities within Texas continued:

- (1) It negotiated in Fort Worth for a lease of a Bell 214-B helicopter (J.A. 83a; J.A. 143a).
- (2) Purchased during 1974 thru 1977 ships, spare parts, accessories and training at about the same level as 1970 thru 1973. (J.A. 135a).
- (3) Entered into a contract with Rocky Mountain Helicopters<sup>4</sup> for use of a Bell 214 that was needed for the Williams-Sedco-Horn work. (J.A. 84a-85a).
- (4) Arranged with and used Williams-Sedco-Horn in Houston, Texas, to pay Rocky Mountain Helicopters on Petitioner's behalf. (J.A. 86a).
- (5) Sent five additional captains to Texas to fly equipment purchased at Bell Helicopter Co. back to South America. (App. 105a-106a Pets. Res. to Resp. Opp. to Pet. for Cert.).
- (6) Sent seven of its personnel to Texas for training from November, 1974, thru August, 1977. (App. 107a Pets. Res. to Resp. Opp. to Pet. for Cert.).
- (7) Sent Jorge Mosquera to Texas for technical consultation in 1975, 1976 and 1977 (App. 107a Pets. Resp. Opp. to Pet. for Cert.).
- (8) Requested a Letter of Credit from Williams-Sedco-Horn in December of 1974. (J.A. 79a-80a).
- (9) Received from Williams-Sedco-Horn \$5,303,910.99 paid from First City National Bank of Houston to Petitioner's bank accounts in the Bank of America, New York City and Panama City, Panama. (R. Exhibits 11 thru 30, oral deposition of Joseph W. Branson).
- (10) By Petitioner's instructions to Williams-Sedco-Horn, an additional \$1,296,530.76 was paid from

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4. It is not clear from the record where this contract was negotiated or executed.

First City National Bank in Houston to Rocky Mountain Helicopters at Denver, Colorado, and Provo, Utah, in satisfaction of Petitioner's contract with Rocky Mountain Helicopter. (R. Exhibits 1 thru 10, oral deposition of Joseph W. Branson).

There is no dispute that neither Respondents nor Respondents' decedents were parties to the contract between Williams-Sedco-Horn and Petitioner. The contract did provide, however, for Petitioner to carry insurance, in United States dollars, to protect Respondents' decedents and Petitioner's own civil responsibilities. (J.A. 15a). Petitioner, in fact, had such coverage. (J.A. 96a).

According to Williams-Sedco-Horn's General Manager, money paid to Petitioner under the contract was paid in United States dollars to Petitioner's bank account in a U. S. bank. It was not paid in Peru because ". . . you can't have U. S. dollars in Peru." (J.A. 150a).

Petitioner's Chief Executive was familiar with the restrictions placed upon the import and export of currency from Peru and if Petitioner was paid dollars in Peru there are difficulties in getting them out. (J.A. 81a). The reason that the contract called for payment in New York or Panama was to avoid getting the money in Peru and not being able to get it out. (J.A. 82a).

Petitioner is a corporation organized under the laws of the Country of Colombia. Its principal place of business is in Bogota, Colombia. It is not disputed that Petitioner did not maintain any office in Texas, had no designated agent for service of process in Texas, was not authorized to do business in Texas, performed no heli-

copter operations in Texas, and did not recruit employees in Texas.

Additionally, the record reveals that Petitioner did no advertising in the United States; did no recruiting in the United States; had no agent for service in the United States; signed no contracts in the United States; had no employees located in the United States; maintained no records in the United States; had no officers or directors located in the United States; had no stockholders in the United States; did no work in the United States; and had no offices in the United States. (J.A. 32a; J.A. 41a; J.A. 57a).

Respondents' decedents were all hired in Houston,<sup>5</sup> Texas by Williams-Sedco-Horn (J.A. 154a; J.A. 162a) to work on the Petro-Peru pipe line project. They were on board one of Petitioner's helicopters when it crashed into a tree in a fog, resulting in their deaths. (J.A. 168a). All aboard were killed. (J.A. 6a).

Suit was instituted on behalf of Respondents<sup>6</sup> in Texas against the employer, Williams-Sedco-Horn, the manufacturer of the helicopter, Bell Helicopter Company, a division of Textron, Inc., and Petitioner.

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5. Dean C. Hall and his family were residents of the State of Arizona. Jesse Lee Lewallen and his family were residents of state of Illinois. Leonard F. Moore and his family were residents of the State of Oklahoma. Elton F. Porton and his parents and children were residents of the State of Oklahoma.

6. The Hall family's case was the first filed. Thereafter, suit was filed on behalf of the Lewallen family, the Porton family and the Moore family. The cases were consolidated for trial following denial of Petitioner's Special Appearance.

Elizabeth Hall died in Arizona on June 21, 1981.

Harve Porton died in Oklahoma on January 24, 1982.

At the trial of the case, Motions for instructed verdicts were granted to Williams-Sedco-Horn and Bell Helicopter Company as to Respondents' claims and as to Petitioner's claim vs. Bell Helicopter Company. (J.A. 167a). Williams-Sedco-Horn, as Cross-Plaintiff, was granted judgment against Petitioner in the amount of \$70,000.00. (J.A. 174a). Respondents were granted judgment on July 7, 1980 against Petitioner in the amounts assessed by the jury. (J.A. 168A-174A).

Petitioner has fairly traced the case through the Appellate Courts of Texas.

### SUMMARY OF ARGUMENT

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), this Court re-affirmed that a state court may exercise personal jurisdiction over a non-resident Defendant only so long as there exists *minimum contacts* between the Defendant and the forum state. Minimum contacts protects the Defendant against the burdens of litigating in a distant and inconvenient forum and ensures that the states do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.

No problem of interstate federalism is involved here. Texas has no jurisdictional competition with any of its sister states and, therefore, with half of the *minimum contacts* functions removed, only the test of *fairness and reasonableness* in the light of *traditional notions of fair play and substantial justice* remains to be satisfied.

It was reasonable and fair that Petitioner was required to defend this particular suit in the light of these relevant factors enunciated in *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286 (1980).

1. Petitioner has contacts, ties and relations with the State of Texas.
2. Petitioner availed itself of the benefits, privileges and protection of Texas law.
3. Petitioner negotiated a contract in Texas with Respondents' Texas employer to transport Respondents and to carry insurance (in United States dollars) to protect its own civil responsibility in the event of injury to Respondents through Petitioner's fault. It is, therefore, reasonable that Petitioner anticipate being haled into Court in Texas in the event of such injury.
4. No state other than Texas could afford a forum for Respondents.
5. Respondents' interest in obtaining convenient and effective relief is apparent and is even more acute when the only alternative forum is in Peru<sup>7</sup> or Colombia, countries with which Respondents have absolutely no ties or contacts.
6. The most efficient resolution of this controversy was in Texas.
7. Although neither Respondents nor Respondents' decedents were citizens of Texas, they were citizens of the United States and Respondents' decedents were employed in Texas by a Texas employer. Texas has a justifiable interest in protecting the rights of United States citizens who have no other state which can protect their rights.
8. Texas has a justifiable interest in the employees of a Texas domiciliary even though they be from out-of-state.
9. The inconvenience to Petitioner in defending this case away from its home or principal place of

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7. Petitioner still faces the *inconvenience* of defending away from its home if the country of Peru was the forum.

business when viewed in the light of all of the relevant factors is neither unfair nor unreasonable.

## ARGUMENT

### I.

#### THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT BAR THE EXERCISE OF IN PERSONAM JURISDICTION OVER PETITIONER FOR CONTACTS WITH THE STATE OF TEXAS ARE SUBSTANTIAL AND CONTINUOUS AND MEET MINIMUM CONTACTS REQUIREMENTS.

Since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) the threshold question in cases of this nature is that of minimum contacts, without which no power or right exists to justify any state in exercising jurisdiction over a non-resident Defendant. The absence of ties, contacts or relations between the non-resident and the forum state is an absolute bar to jurisdiction. *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 299 (1980); (no contacts, ties or relations); *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977) (Defendants simply had nothing to do with the forum state); *Rush v. Sanchuk*, 444 U.S. 320, 332 (1980), (no contacts).

The amount and kind of activities carried on by Petitioner within the State of Texas were substantial and continuous and proof of such established *minimum contacts* in keeping with the holdings of this Court in *International Shoe Company v. Washington*, 326 U.S. 310 (1945), and *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1952).

## II.

**REGULAR PURCHASES BY A NON-RESIDENT  
WITHIN THE FORUM STATE ARE RELEVANT TO  
THE QUESTION OF MINIMUM CONTACTS AND  
AFFILIATING CIRCUMSTANCES.**

No court has ever ruled that purchases by a non-resident within the forum state are of no significance, nor that such should be ignored as irrelevant in examining the quantity and quality of contacts or affiliating circumstances. The Court in *International Shoe*, p. 313, noted that no contracts for purchase of merchandise were involved in the State of Washington.

*Rosenberg Brothers & Company v. Curtis Brown Company*, 260 U.S. 516 (1923) stood for the proposition that purchases of goods by officers of a foreign corporation did not warrant the inference that the corporation was *present* within the jurisdiction of the state.

In *Henry R. Jahn & Son, Inc. v. Superior Court*, 49 Cal. 2d 855, 323 P.2d 437 (1958), the non-resident Defendant maintained that its purchase of goods on a regular basis did not make it amenable to suit in California, invoking *Rosenberg Brothers & Company v. Curtis Brown Company*, 260 U.S. 516 (1923). That court stated:

"The United States Supreme Court, however, has advanced beyond the present theory of jurisdiction underlying that case. *McGee v. International Life Insurance Company*, 355 U.S. 290, 78 Sup. Ct. 199, 200, 2 L.Ed.2d 223; See also, *International Shoe Company v. Washington*, 326 U.S. 310, 316-317, 66 Sup. Ct. 154. . . . Since there is no distinction for jurisdictional purposes between regular selling

and regular buying (citing cases), the *Rosenberg case* is as obsolete for the one as for the other. Many cases anteceding the *Rosenberg case* and many since the *International Shoe case* have sustained jurisdiction on the basis of Defendant's purchasing activities in the state. (citing cases)."

Regardless of the importance, quality or significance to be attached to the purchase of goods, equipment and training in the forum state, such matters should be considered in the overall view of *those affiliating circumstances* that are a necessary predicate to the exercise of state court jurisdiction of which Mr. Justice White wrote in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

Petitioner cites *Tillay v. Idaho Power Company*, 425 Fed. Supp. 376 (E.D. Washington 1976). There, Defendants only contact with the forum state was its annual interstate purchase of approximately four percent of the equipment used on construction of new generation and transmission facilities<sup>8</sup> and such purchases were deemed *incidental* to its primary activity of generating and selling electricity.

Here, Petitioner was not purchasing equipment with which to build helicopters. It was purchasing helicopters. Eighty percent of Petitioner's entire fleet was bought in Texas; received in Texas by its agents; some of whom were trained in Texas; presumably fueled and serviced in Texas; then flown through Texas air space enroute

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8. In addition to Defendant's purchases, it was also a member of the Intercompany Pool. The Pool was little more than a conduit for information and had no power to conduct sales or transact other business for its members, nor could it be characterized as Defendant's agent.

to South America. Petitioner's only purchases which could properly be deemed *incidental* are the parts it regularly bought in Texas.

Additionally, Petitioner bought and paid for maintenance training.<sup>9</sup> This activity in Texas was important and qualitative, since it not only served Petitioner insofar as its own fleet is concerned, but served as an obvious stepping stone to its becoming a designated Bell Helicopter repair facility for the Country of Colombia.

The Judge, in *Tillay v. Idaho Power Company*, *supra*, did not ignore the Defendant's purchases in the State of Washington, but held that its involvement in the inter-company pool, even when coupled with Defendant's Washington purchases, while close, was insufficient connection with Washington to justify general jurisdiction in an unrelated cause of action.

Petitioner's contacts within the State of Texas also included negotiating for helicopter leasing (J.A. 83a; J.A. 143a); negotiating the contract with Williams-Sedco-Horn in Houston (J.A. 108a, 116a-118a) utilizing that company to make payments from Houston to pay off Petitioner's obligations on its contract with Rock Mountain Helicopters (J.A. 86a) and requesting a letter of credit from Williams-Sedco-Horn in Houston (J.A. 79a-80a).

If it is the concern of the Solicitor General that a holding for Respondents here will cause foreign companies to refrain from purchasing in the United States

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9. While the training of pilots may well have been included in the purchase price of helicopters (J.A. 94a-95a), the maintenance training was not. (J.A. 95a; J.A. 135a).

for fear of exposure to general jurisdiction on unrelated causes of action, such concern is not well founded.

Respondents' cause is not dependent on a ruling that mere purchases in a state, together with incidental training for operating and maintaining the merchandise purchased can constitute the ties, contacts and relations necessary to justify jurisdiction over an unrelated cause of action. However, regular purchases and training coupled with other contacts, ties and relations may form the basis for jurisdiction.

The opening statement of Ambassador William E. Brock, United States Trade Representative, was presented to a committee of the U. S. Senate and a committee of the U. S. House of Representatives. The legislature is the proper forum for the passage of laws needed to aid United States trade competitiveness. The functions of the Due Process Clause are to guarantee against inconvenient litigation and to preserve the system of interstate federalism. It does not act as a guarantor of international trade competitiveness.

### III.

#### **THAT A CAUSE OF ACTION IS ENTIRELY UNRELATED TO THE NON-RESIDENT DEFENDANT'S CONTACTS WITH THE FORUM STATE DOES NOT FORECLOSE THE ASSUMPTION OF JURISDICTION.**

This Court dealt with this very issue in *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1952). It was there held that the amount and kind of activities which must be carried on by a foreign corporation in the forum state so as to make it reasonable and

just to subject the corporation to the jurisdiction of that state are to be determined in each case.

Neither this Court nor any other has held that a non-resident corporation must have a *de facto* corporate headquarters or principal place of business in the forum state to satisfy the test of reasonableness and fairness.

In *International Shoe Company v. Washington*, 326 U.S. 310 (1945), the Chief Justice wrote at page 318:

"While it has been held in cases on which Appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity . . . there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. See *Missouri K. & T. R. Co. v. Runnels*, 225 U.S. 565; *Tauza v. Susquehanna Coal Company*, 220 N.Y. 259, 115 N.E. 915, *Cf. St. Louis S.W. R. Co. v. Alexander*, *supra*."

#### IV.

### MINIMUM CONTACTS SERVE TWO RELATED BUT DISTINGUISHABLE FUNCTIONS.

Due process requires that the Plaintiff must first establish the existence of minimum contacts; then there still exists two limitations on state court jurisdiction. One is that no state may infringe upon the jurisdictional rights or power of another state under our federal system. The other, that it is fair and reasonable to require the non-resident to defend a cause away from its home. *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S.

286 (1980); *Kulko v. Superior Court of California*, 436 U.S. 84 (1978); *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1952). To make a judgment as to each of these limitations necessarily requires the court to re-examine those *minimum contacts* which are the bases for jurisdiction in the first place.

*Hanson v. Denckla*, 357 U.S. 235, 250 (1958), spoke to the territorial limitations on the power of the respective states. *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 292 (1980), held this limitation ensures that the states, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.

Texas has no jurisdictional competition with any of its sister states in this case. She claims jurisdiction as a sovereign over a non-resident Defendant, which clearly has regular, systematic, quantitative and qualitative contacts which confirm affiliation between Petitioner and Texas. Therefore, the only question is the fairness and reasonableness of requiring Petitioner to defend this cause away from its home.

## V.

IT IS REASONABLE AND FAIR UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE THAT PETITIONER BE SUBJECT TO THE JURISDICTION OF TEXAS. SUCH JURISDICTION DOES NOT OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

This matter is akin to, if not identical with, the concern of the Courts in pleas of *forum non conveniens*.

Judge Learned Hand, in discussing the holding of *International Shoe*, *supra*, made such comparison in *Kirkpatrick v. Texas & P. Ry. Co.*, (2 Cir.) 166 Fed. 2d 788 (1948);

"... the Court must balance the conflicting interests involved, i.e., whether the gain to the Plaintiff in retaining the action where it was, outweighed the burden imposed on the Defendant; or vice versa. That question is certainly indistinguishable from the issue of *forum non conveniens*."

"... the question whether it must stand trial in the particular forum which the Plaintiff has chosen is, as we have said, identical with the plea of *forum non conveniens*."

The nature of the incident giving rise to this litigation virtually demands an available forum where the owner/operator (Petitioner), the employer/contractor (Williams-Sedco-Horn) and the manufacturer/seller (Bell Helicopter Co.) can be joined in a single action to eliminate multiple suits and, as near as possible, inconsistent results.

Petitioner's tort occurred in Peru, but the injury and harm to Respondents occurred in the United States. The harmful effects of Petitioner's negligence were visited upon Respondents in Oklahoma, Arizona and Illinois.

Clearly, each of these states has a manifest interest in providing effective means of redress for its citizens, as did California in *McGee v. International Life Insurance Company*, 355 U.S. 220, 223 (1957), but neither Arizona nor Illinois nor Oklahoma<sup>10</sup> has those affiliating circumstances necessary to the exercise of state court jurisdiction.

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10. The only contact Petitioner had with Oklahoma was when Mr. Restrepo and his wife spent the night in Tulsa enroute to the Houston meeting with Williams-Sedco-Horn.

New York, Utah and Colorado have only minimal affiliation with Petitioner.<sup>11</sup>

Clearly, Texas is the only forum which has substantial and continuous affiliation with Petitioner. Manifestly, if Texas cannot constitutionally open its courts to Respondents, there is no forum available to them in the United States.

Although no court has yet held that jurisdiction by necessity is permissible, such has not been foreclosed. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37 (1977), appears to have left open such possibility.

Some of the forum problems facing Respondents fit this description by Professor Brilmayer in *How Contacts Count: Due Process Limitations in State Court Jurisdiction*, 1980 S.Ct. Rev. 77, p. 108.

A necessity exception would include cases where there is no state in which Plaintiff can sue, for instance because there are several Defendants who do not all have minimum contacts with a single state. In these cases, the Plaintiffs need to be able to join all of them (so as not to risk multiple suits with possibly inconsistent results) arguably warrants constitutional recognition and thus overrides the Defendants' lack of minimum contacts.

*von Mehren & Troutman, Jurisdiction to Adjudicate; A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1173-1174 (1966), suggest:

Another forum of jurisdiction by necessity may also eventually emerge: the assertion of jurisdiction in

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11. Petitioner had a bank account in New York City. It had a contract with Rocky Mountain Helicopters and funds were directed to Provo, Utah and Denver, Colorado on that account.

the interest of justice in those rare cases in which no forum that is appropriate under conventional standards is prepared to act.

In assessing fairness and reasonableness, these matters appear to be important to this Court:

In *International Shoe*, p. 320:

Were the contacts irregular or casual or systematic and continuous?

Did the contacts result in a large volume of interstate business?

Did the contacts make available to the non-resident the benefits and protection of the laws of the state?

Did the cause of action arise out of the non-resident's activities in the state?

In *McGee v. International Life*, p. 223:

Would the Plaintiff be placed at a severe disadvantage if jurisdiction was denied?

Would the Defendant be unconstitutionally inconvenienced in defending away from home?

In *Kulko v. California Superior Court*, pp. 97-98:

Is the Defendant's conduct and connection with the forum state such that it should reasonably anticipate being haled into Court there?

In *World-Wide Volkswagen*, p. 292:

What is the Plaintiff's interest in obtaining convenient and effective relief?

What is the forum state's interest in adjudicating the dispute?

It is held that the test of reasonableness, fair play and substantial justice cannot be mechanical or quantitative, *International Shoe*; must be determined in each case, *Perkins*; the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present, *Kulko v. Superior Court of California*, 436 U.S. 84, 92; will in an appropriate case be considered in light of other relevant factors, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292.

Forum shopping may be of genuine concern to the National Manufacturer's Vehicle Association, but no such luxury was available to Respondents here. That problem, like interstate federalism, simply does not exist in this case.

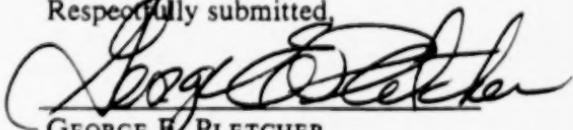
The concern that the Texas Supreme Court decision will somehow create general jurisdiction in any case where the non-resident does any significant business is groundless because of this court's repeated rulings to the effect that even though the minimum contacts rule may open the jurisdictional door, it is promptly closed again if the forum state is attempting to reach out beyond the limits imposed by its status as a co-equal sovereign in our federal system or if it is not fair and reasonable and inoffensive to traditional notions of fair play and substantial justice for such exercise of jurisdiction.

An examination of the facts and circumstances of this case and applicable rulings of this court should lead to the conclusion that the exercise of jurisdiction is proper.

## CONCLUSION

For the reasons set forth above, the judgment of the Supreme Court of Texas should be affirmed.

Respectfully submitted,



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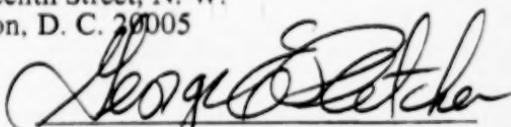
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**CERTIFICATE OF SERVICE**

I, GEORGE E. PLETCHER, being over the age of 18 years and a member of the firm of HELM, PLETCHER & HOGAN, hereby certify that I have this ~~10th~~ day of June, 1983, served three copies of the foregoing Brief for Respondents upon Petitioner, Helicopteros Nacionales De Colombia, S.A., the only party required to be served, by mailing such copies to its attorney of record in a sealed envelope, first class postage prepaid, deposited at the United States Post Office, Main Office, in Houston, Texas, and addressed as follows:

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SEP 14 1983

No. 82-1127

ALEXANDER L. STEVENS,  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner,*  
v.  
ELIZABETH HALL, *et al.*,  
*Respondents.*

On Writ Of Certiorari To The  
Supreme Court Of Texas

**BRIEF OF PETITIONER IN REPLY TO  
BRIEF OF RESPONDENTS**

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## TABLE OF CONTENTS

	Page
REVIEW OF RESPONDENTS' STATEMENT OF THE CASE ....	1
ARGUMENT	
I. THE ASSERTION OF JURISDICTION BY THE COURTS OF TEXAS OVER A NON-RESIDENT ALIEN ON A CAUSE OF ACTION ARISING IN PERU AND UNRELATED TO TEXAS VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT .....	6
II. THE DUE PROCESS CLAUSE LIMITS THE SOVEREIGN POWER OF TEXAS TO ASSERT JURISDICTION OVER HELICOL .....	9
III. RESPONDENTS' THEORY OF JURISDICTION BY NECESSI- TY VIOLATES THE CONSTITUTIONAL LIMITATIONS ON A STATE'S POWER TO ADJUDICATE FOREIGN-BASED CON- TROVERSIES .....	12
CONCLUSION .....	14

## TABLE OF AUTHORITIES

CASES:	Page
<i>Hanson v. Denckla</i> , 357 U.S. 235 (1958) .....	10
<i>Henry R. Jahn &amp; Son, Inc. v. Superior Court</i> , 49 Cal.2d 855, 323 P.2d 437 (1958) .....	8
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) .....	6, 12, 13
<i>Kulko v. Superior Court</i> , 436 U.S. 84 (1978) .....	9
<i>Pennoyer v. Neff</i> , 95 U.S. 714 (1877) .....	12
<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437 (1952) .....	<i>passim</i>
<i>Rush v. Savchuk</i> , 444 U.S. 320 (1980) .....	13
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977) .....	12-13
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	9
OTHER AUTHORITIES:	
<i>von Mehren &amp; Trautman, Jurisdiction to Adjudicate: A Suggested Analysis</i> , 79 Harv. L. Rev. 1121 (1966) .....	10-11

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—  
**BRIEF OF PETITIONER IN REPLY TO  
BRIEF OF RESPONDENTS**

Petitioner Helicopteros Nacionales de Colombia, S.A. (Helicol) hereby submits its reply to the Brief of Respondents Elizabeth Hall, *et al.*

**REVIEW OF RESPONDENTS' STATEMENT OF THE CASE**

On the jurisdictional issue before the Court, petitioner and respondents agree on the following jurisdictional facts:

- 1) Helicol has never maintained an office in Texas, Brief of Respondents, p. 6;
- 2) Helicol has never had any employees located in Texas, Brief of Respondents, p. 7;
- 3) Helicol has never had a designated agent for service of process in Texas, Brief of Respondents, p. 6;

- 4) Helicol has never been authorized to do business in Texas, Brief of Respondents, p. 6;
- 5) Helicol has never performed in Texas any of its business, which was and is helicopter transportation in South America, Brief of Respondents, pp. 6-7;
- 6) Helicol recruited no employees in Texas, Brief of Respondents, p. 7.

Respondents also concede that Helicol did no advertising and signed no contracts in the United States; had no employees, directors or officers located in the United States; had no offices, maintained no business records and did no work in the United States. Brief of Respondents, p. 7.

However, in an apparent attempt to divert attention from Helicol's lack of ties with Texas, respondents grossly exaggerate those few contacts Helicol did have with Texas. Brief of Respondents, pp. 3-6. An examination of respondents' list of Helicol's contacts with Texas reveals that all but a very few of the claimed contacts relate to Helicol's purchases of capital assets and training from Bell Helicopter Company (Bell) of Fort Worth, Texas.

Helicol does not dispute that it purchased approximately three million dollars worth of such equipment and training from Bell in the six-year period preceding the accident. Helicol, however, rarely dealt with Bell in Texas other than to take delivery of helicopters in Texas and receive the incidental training which Bell provided at its factory facilities. During the six-year period prior to the accident, the only documented correspondence between Helicol and Bell in Fort Worth, Texas, consisted of one letter and ten telexes.<sup>1</sup>

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<sup>1</sup> The record below shows one letter addressed to Bell from Helicol (J.A. 126a, 136a, Ex. admitted, Transcript of Special Appearance

The record indicates that Helicol sent these communications from South America to Bell in Texas principally to confirm travel arrangements and orders made with the Bell representative in South America.<sup>2</sup> Respondents' attempt to cast the relationship between Helicol and Bell as one in which Helicol employees traveled to Texas to engage in an ongoing relationship with a stay-at-home Texas vendor is misleading and ignores the realities of the international business conducted by Bell through its representatives in South America.

Respondents also refer to negotiations between petitioner and Bell regarding Helicol's potential designation as a Bell repair facility in Colombia. Respondents characterize such negotiations, which never resulted in an agreement, as activity by Helicol within Texas. Brief of Respondents, p. 4. However, the record reflects that, while Helicol had informed Bell headquarters in Texas of such negotiations, the negotiations themselves were with Bell's representative in Colombia. (J.A. 90a; Record, Telex dated Sept. 7, 1976, Ex. to Written Interrogatories

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Hearing, pp. 216-217) and ten telexes to Bell from Helicol (J.A. 126a, 137a, 138a, 140a-143a; Record, Telex dated Sept. 7, 1976, Ex. to Written Interrogatories to Ben James Brown; Exs. admitted, Transcript of Special Appearance Hearing, pp. 216-217) from 1970 until the accident occurred in which respondents' decedents died.

<sup>2</sup> The record reflects that orders for helicopters were placed with Mr. Boris de la Piedra, Bell's agent in Colombia. (J.A. 136a, 142a, Ex. admitted, Transcript of Special Appearance Hearing, pp. 216-217). Bell had at least two other representatives in Colombia and, on occasion, its executives traveled to Colombia on behalf of Bell. (Record, Telex dated Sept. 7, 1976, Ex. to Written Interrogatories to Ben James Brown, Ex. admitted, Transcript of Special Appearance Hearing, pp. 216-217).

to Ben James Brown, Ex. admitted, Transcript of Special Appearance Hearing, pp. 216-217).<sup>3</sup>

The only contact Helicol had with Texas which was not related to purchases from Bell was a visit by its General Manager, Francisco Restrepo, to Houston, Texas, in October of 1974 for approximately six hours. Restrepo flew from South America to Tulsa, Oklahoma, to meet with a representative of Williams Brothers International, a member of Williams-Sedco-Horn, operating as Consorcio in Peru. In Tulsa, after engaging in discussions regarding the work which Williams-Sedco-Horn needed in Peru<sup>4</sup> (J.A. 104a-105a), Restrepo was asked to fly to Houston.<sup>5</sup>

At the meeting in Houston, Restrepo and the representatives of Williams-Sedco-Horn discussed, for approx-

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<sup>3</sup> When asked if Helicol had been negotiating back and forth with Bell, Restrepo answered: "Not directly with Bell. We have a representative [of Bell] in Colombia." (J.A. 90a).

<sup>4</sup> Respondents argue that no meeting at all occurred in Oklahoma, apparently in an attempt to enhance the significance of the Houston meeting. See Brief of Respondents, p. 2, n.1. Respondents completely disregard the testimony of Novak (J.A. 148a, Transcript of Deposition admitted, Transcript of Special Appearance Hearing, pp. 216-217) and Greenough (J.A. 104a-105a).

<sup>5</sup> The record is clear that Restrepo did not foresee that he would be asked to travel to Texas when he left Colombia. Restrepo was called in Colombia by George Littlejohn of Williams Brothers International and asked to come to Tulsa to discuss potential work in Peru with Littlejohn, whom Restrepo knew from a prior job. He planned to travel only to Oklahoma to speak with Williams. Once in Tulsa, he received a call from a Williams official who told him that Williams wanted him to attend a meeting in Houston. He was flown to Houston on Williams' corporate aircraft on the morning of October 3, 1974, and returned to Tulsa the afternoon of the same day. (J.A. 64a-65a, 73a-75a, 78a).

imately one hour, a potential contract for helicopter transportation services in Peru. (J.A. 78a). Such a contract was not, and indeed could not have been, entered into in Houston, Texas, as such would have been forbidden by Peruvian law. (J.A. 61a-62a).

Neither Helicol nor Williams-Sedco-Horn was contractually bound as a result of the meeting in Houston. The contract was not executed until November 1974 in Lima, Peru. (J.A. 12a-17a, Ex. admitted, Transcript of Special Appearance Hearing, pp. 216-217, J.A. 113a). The implication contained in respondents' brief that Helicol and Williams-Sedco-Horn entered into a contractual relationship at the Houston meeting is simply false. Brief of Respondents, p. 3.

Respondents' statement of the case is distorted in other ways. Respondents characterize activities of others as those of Helicol within Texas. For example, respondents state that Helicol entered into a contract in Texas with Rocky Mountain Helicopters of Provo, Utah (J.A. 151a, Transcript of Deposition admitted, Transcript of Special Appearance Hearing, pp. 216-217) for the use of a helicopter needed on the Williams-Sedco-Horn job. Brief of Respondents, pp. 4-5. The record reflects no dealings between Helicol and Rocky Mountain Helicopters occurring in Texas<sup>6</sup> (J.A. 82a-87a, 149a-152a, Transcript of Deposition admitted, Transcript of Special Appearance Hearing, pp. 216-217) nor does it evidence any instruction by Helicol to Williams-Sedco-Horn that Williams-Sedco-

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<sup>6</sup> After respondents indicate that one of petitioner's activities in Texas was a contractual understanding with Rocky Mountain Helicopters, Brief of Respondents, pp. 4-5 (item 3, p. 5), respondents concede that the record is unclear where the contract was negotiated or executed. Brief of Respondents, p. 5, n.4.

Horn utilize a Texas bank to make payment to Rocky Mountain Helicopters.

Helicol's contacts with Texas, then, consist only of the receipt of purchased equipment and services in Texas from a Texas vendor and the visit of one Helicol employee to Texas for a few hours in connection with a potential contract for the performance of helicopter services in Peru.

## ARGUMENT

### I

#### THE ASSERTION OF JURISDICTION BY THE COURTS OF TEXAS OVER A NON-RESIDENT ALIEN ON A CAUSE OF ACTION ARISING IN PERU AND UNRELATED TO TEXAS VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

Respondents' mischaracterization of the record in this case is an attempt to bring the facts within the criteria established by the Court in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). Respondents agree that, as in *Perkins*, the causes of action asserted by them did not arise out of Helicol's contacts with the forum state. Brief of Respondents, pp. 14-15.

Petitioner and respondents also agree that the due process standard set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and applied in *Perkins*, is controlling. Brief of Respondents, pp. 10, 14-15.

Respondents acknowledge that, under *Perkins*, where the cause of action does not arise out of the defendant's forum contacts, the defendant's activities in the forum must be substantial and continuous and of the nature and quality as to justify the assertion of *in personam* jurisdiction. Brief of Respondents, pp. 10, 14-15. Respondents contend, however, that Helicol's activities within Texas

were substantial and continuous and of the required nature and quality under *Perkins*.

Respondents rely principally upon Helicol's purchases from Bell. The purchase of helicopters, parts and related training by Helicol from a Texas vendor does not constitute any part of Helicol's business of furnishing air transportation. While petitioner needed helicopters to operate its business in South America, *Perkins* plainly contemplates that a defendant must do much more than purchase capital items from a forum vendor to subject itself to the general jurisdiction of the forum state. In *Perkins*, the defendant had established its base of corporate operations in Ohio, thus justifying the assertion of general jurisdiction over it. The defendant in *Perkins* was, in effect, like any other Ohio resident who would be subject to *in personam* jurisdiction in Ohio on a cause of action arising anywhere. As *Perkins* indicates, general jurisdiction requires ongoing ties to the forum approaching domiciliary status.

Respondents apparently agree that Helicol's purchases of equipment and incidental operational and maintenance training alone do not provide a basis for general jurisdiction. Rather respondents urge that "regular purchases and training coupled with other contacts, ties and relations may form the basis for jurisdiction," over an unre-

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<sup>7</sup> There were, however, only relatively infrequent, irregular purchases of helicopters by Helicol. Five helicopters were purchased over the course of eight years. There were frequent but not regular purchases of helicopter parts, made as the need arose. The training of pilots and mechanics depended upon the purchase of helicopters, not upon some regular schedule of general pilot training, and was a nominal extra cost when compared to the cost of the helicopters and spare parts. (J.A. 135a, Ex. admitted, Transcript of Special Appearance Hearing, pp. 216-217).

lated cause of action.<sup>8</sup> Brief of Respondents, p. 14. Putting aside purchases as a basis for general jurisdiction, Helicol's only other contact with Texas was a single contract discussion in Houston.<sup>9</sup> The presence of one employee in Texas for approximately six hours cannot constitute other "contacts, ties and relations." This single contract discussion, even when combined with purchases from a Texas vendor for out-of-state use, does not create a permanent tie to Texas justifying the assertion of general jurisdiction over Helicol. These purchases and the single contract discussion are not the substantial and continuous

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<sup>8</sup> Respondents rely upon *Henry R. Jahn & Son, Inc. v. Superior Court*, 49 Cal.2d 855, 323 P.2d 437 (1958), for their claim that no distinction should be made for jurisdictional purposes between purchasing and selling. *Jahn*, however, involved specific rather than general jurisdiction. As the California Supreme Court emphasized, the cause of action in *Jahn* arose out of the defendant's activities within the forum state. Thus, *Jahn* provides no support for respondents' claim that general jurisdiction may be premised upon the transient presence of Helicol's employees within Texas for the purpose of taking delivery of purchased equipment and receiving training.

<sup>9</sup> Respondents rely upon other purported contacts with the State of Texas, in addition to purchases, for the exercise of general jurisdiction. Brief of Respondents, p. 13. They cite one occasion in which Helicol negotiated with Bell for the lease of a helicopter for use in Peru and requested a letter to enable Helicol to buy the same helicopter. The helicopter was neither bought nor leased but, in any event, such activity is a part of the purchasing activities discussed *supra*. Respondents cite as an additional Texas contact the payments made by Williams-Sedco-Horn from Texas to Rocky Mountain Helicopters. However, all invoices for payments owed to both Helicol and Rocky Mountain Helicopters were submitted to Williams-Sedco-Horn's office in Lima, Peru. Williams-Sedco-Horn independently selected a Texas bank from which to make such payments. Thus, these payments cannot constitute an additional contact by Helicol with Texas. See p. 5, *supra*.

activities approaching domiciliary status such as were present in *Perkins*.

The holding of the Supreme Court of Texas that Helicol's contacts with Texas provide a basis for general jurisdiction is a "mockery" of the due process clause. As held by the Court in *Kulko v. Superior Court*, 436 U.S. 84 (1978):

To hold such temporary visits to a State a basis for the assertion of *in personam* jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment.

436 U.S. at 93.

## II

### THE DUE PROCESS CLAUSE LIMITS THE SOVEREIGN POWER OF TEXAS TO ASSERT JURISDICTION OVER HELICOL

Respondents have contended that if there are minimum contacts of a defendant with the state, that state may exercise *in personam* jurisdiction over that defendant if, in so doing, "the jurisdictional rights or power of another state under our federal system" are not infringed. Brief of Respondents, p. 15.

The issue in the case is not whether any other state may provide a jurisdictional alternative or whether there is "jurisdictional competition with any of [Texas'] sister states in this case." Brief of Respondents, p. 16. Rather the issue is whether Texas constitutionally asserted jurisdiction over Helicol on a foreign-based cause of action.

Limitations on state court jurisdiction embodied in the due process clause "are a consequence of territorial limitations on the power of the respective States." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294

(1980), quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

A state, as an incident of sovereignty, has the power to adjudicate a controversy arising in the territory of the state involving a nonresident defendant where the defendant, though not present in the state, had some minimal contacts with the state which gave rise to the controversy. Thus where a nonresident comes into a state on a transitory basis and leaves behind a tort or contract breach committed in the state, a state may constitutionally require the nonresident to return and defend the legal action based upon that tort or contract breach. A state may exercise such specific jurisdiction, as a matter of sovereignty, because the cause of action arose within the state out of the defendant's activities in the state.

Absent such specific jurisdiction, a state may exercise sovereignty over a defendant who is a resident of the state or who has established permanent ties or a presence within the territory of the state such as existed in *Perkins*. It is a proper exercise of sovereignty for a state to require a defendant to defend a lawsuit "in his own backyard." See Brief of Petitioner, p. 13, n. 8.

Respondents have discounted the territorial limitations on the power of state courts by arguing, in essence, that Texas has broader powers to assert jurisdiction over a cause of action arising in a foreign land involving an alien defendant than it would have over a cause of action arising in Oklahoma involving an Oklahoma defendant. However, as Professors von Mehren and Trautman have stated:

No fundamental distinction needs to be drawn between the jurisdictional problems raised by litigation involving international elements arising in an American court, state or federal, and those raised by litiga-

tion in which the nonlocal elements are connected with sister states . . . [T]he relevant constitutional considerations seem equally applicable to the interstate and the international case." von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1122 (1966).

The due process clause is not simply concerned with the jurisdictional rights or powers of states *vis-a-vis* other states. The due process clause also serves to prevent states from exercising their powers of sovereignty to trespass upon the sovereignty of other nations, in violation of the rights of nonresident aliens. Limitations on the sovereignty of the states should, if anything, be more scrupulously observed when foreign countries and principles of international comity are involved.<sup>10</sup>

The constitutional limitations on state sovereignty do not permit Texas to assume jurisdiction over Helicol, a non-resident alien defendant, on a foreign-based cause of action.

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<sup>10</sup> According to Professors von Mehren and Trautman:

[I]n establishing bases for jurisdiction in the international sense, a legal system cannot confine its analysis solely to its own ideas of what is just, appropriate, and convenient. To a degree it must take into account the views of other communities concerned. Conduct that is overly self-regarding with respect to the taking and exercise of jurisdiction can disturb the international order and produce political, legal, and economic reprisals.

von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1127 (1966).

## III

RESPONDENTS' THEORY OF JURISDICTION BY  
NECESSITY VIOLATES THE CONSTITUTIONAL  
LIMITATIONS ON A STATE'S POWER TO ADJUDICATE  
FOREIGN-BASED CONTROVERSIES

In tacit recognition that jurisdiction cannot be asserted by Texas over Helicol under *International Shoe* and *Perkins*, respondents argue that the Court should assert jurisdiction over Helicol in order to provide respondents with a forum in the United States. Respondents rely upon a footnote in *Shaffer v. Heitner*, 433 U.S. 186, 211 n.37 (1977), as having left open such a "possibility." Brief of Respondents, p. 18. Respondents concede that no court has ever upheld *in personam* jurisdiction based upon a doctrine of "jurisdiction by necessity." *Id.*

In *Shaffer* the Court held that, absent sufficient minimum contacts between the forum and the defendants, the existence of defendants' property within the forum could not form the basis for *quasi-in-rem* jurisdiction. However, the Court specifically left open the question of whether the existence of property in the state might provide a sufficient basis for the assertion of *in rem* jurisdiction where no other forum is available. 433 U.S. at 211 n.37.

Even assuming that the Court would answer the foregoing question in the affirmative, to permit the assertion of *in personam*, as distinguished from *in rem*, jurisdiction simply on the basis that no other forum is available in the United States is contrary to every jurisdictional principle painstakingly developed by the Court in the century since *Pennoyer v. Neff*, 95 U.S. 714 (1877).

The *Shaffer* footnote cited by respondents is little more than an indication by the Court that rights in a *res* might still permissibly be adjudicated in the state where the *res*

is located, if no other forum exists. The distinction between *in rem* and *in personam* jurisdiction renders the *Shaffer* footnote irrelevant here.

Respondents' argument that jurisdiction in Texas should be upheld because another United States forum may not be available focuses solely upon the interests of the plaintiff. However, the plaintiff is not the focus of jurisdictional questions under *International Shoe* and *Perkins*; rather, the focus is on the defendant. See *Rush v. Savchuk*, 444 U.S. 320, 332 (1980).

Even if the forum state's interest in providing a forum for its residents could be considered in assessing the fairness to the defendant, Texas has no *bona fide* interest in respondents. None of the respondents has ever been a Texas resident, nor were any of their decedents residents of Texas. Brief of Respondents, pp. 7, 9.

Respondents assert that jurisdiction by necessity should be permitted in this case as the "nature of the incident . . . virtually demands" a forum where Helicol, Williams-Sedco-Horn and Bell could be sued together. Brief of Respondents, p. 17. Once again, respondents have focused impermissibly on their own convenience. Due process, however, demands that the requirements of *International Shoe* and *Perkins* be met as to the defendant.

Respondents totally disregard the existence of forums in Peru and Colombia. Respondents' assumption that only an American court is fit to resolve the dispute reflects the provincial view, mirrored in the majority opinion of the Texas Supreme Court, that justice can be accorded only in United States courts and that a United States forum should always be available notwithstanding the constitutional limitations imposed upon state sovereignty.

## CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the Brief of Petitioner filed May 12, 1983, the judgment of the Supreme Court of Texas should be reversed and the cause remanded with instructions to dismiss for lack of *in personam* jurisdiction.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this 14th day of September, 1983, served three copies of the foregoing Brief of Petitioner in Reply to Brief of Respondents upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in a sealed envelope, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

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/s/ \_\_\_\_\_  
THOMAS J. WHALEN, ESQ.

MOTION FILED  
MAY 10 1983

No. 82-1127

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IN THE

**Supreme Court of the United States**

**OCTOBER TERM, 1982**

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**HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
PETITIONER**

v.

**ELIZABETH HALL, ET AL.**

---

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF TEXAS**

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**MOTION FOR LEAVE TO FILE  
BRIEF AMICUS CURIAE**

**and**

**BRIEF FOR THE MOTOR VEHICLE  
MANUFACTURERS ASSOCIATION AS  
AMICUS CURIAE IN SUPPORT OF REVERSAL**

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IN THE

# Supreme Court of the United States

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v.

ELIZABETH HALL, ET AL.

*ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF TEXAS*

## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Motor Vehicle Manufacturers Association of America, Inc. ("MVMA") respectfully moves pursuant to Rule 36.3 of the Rules of this Court for leave to file a brief amicus curiae in this case in support of petitioner. The consent of counsel for petitioner and respondents was requested but has been withheld.

The MVMA is a trade organization primarily composed of automobile manufacturers. Members of the MVMA build over 99% of all motor vehicles manufactured in the United States. In addition, MVMA members manufacture various other products, including tractors and agricultural equipment, construction and mining machinery, locomotives and railroad rolling stock, and gasoline and diesel engines for innumerable industrial and agricultural uses. Products manufactured by members of the MVMA are sold throughout the United States.

The commercial activities of MVMA members have resulted in a substantial number of lawsuits filed by plaintiffs in distant and inconvenient forums. The forums selected for such suits frequently have no connection with the events giving rise

to the litigation and are remote from the domicile of all of the parties and witnesses. Such suits impose substantial burdens on members of the MVMA and interfere with the efficient conduct of their business in interstate commerce.

A recent example of such a suit, involving an MVMA member, is *Cowan v. Ford Motor Company*, 694 F.2d 104 (5th Cir. 1982), suggestion for rehearing *en banc* pending. In that case, the plaintiff, a Texas resident, brought suit in Mississippi to redress an alleged tort that occurred in Texas. Neither the plaintiff nor the tort had any connection with the forum state and the motor vehicle involved in the case had no connection with that state. Likewise, the defendant was neither domiciled in nor had its principal place of business in the forum state. The defendant's sole connection with the forum was its sale of products in the state, which was comparable to its sale of products in every other state, and its appointment of a local agent to accept process, which is required in every state where it sells products. The plaintiff filed suit in Mississippi for the sole purpose of evading the restrictions of the statute of limitations of the jurisdiction where the alleged tort took place. A panel of the Fifth Circuit nonetheless sustained *in personam* jurisdiction under the Due Process Clause because the defendant did some business in Mississippi and because it had, in accordance with local law, appointed an agent to receive process. The reasoning of this Court's decision in the present case (and also in *Keeton v. Hustler Magazine Inc.*, No. 82-485) is likely to affect the disposition of the *Cowan* case as well.

Unless it is overturned,\* the panel's decision in *Cowan* would expose any manufacturer doing business on a nationwide

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\* The *Cowan* decision is still before the Fifth Circuit on Ford's suggestion for rehearing *en banc*. Supplemental briefs have been filed at the request of the court. If the panel's decision stands, Ford's attorneys will recommend that a petition for certiorari be filed in this Court.

basis to suit on any cause of action in the state which has the longest statute of limitations as to any subject. The *Cowan* case exemplifies the burdensome litigation to which MVMA members have been increasingly exposed in recent years as a result of their sale of products throughout the nation, and illustrates the direct interest of the MVMA — as well as most other companies doing business nationwide — in the resolution of the question raised in this case.

The present case requires the Court to further define the limitations imposed by the Due Process Clause on forum-shopping activities of plaintiffs who bring suit in inconvenient jurisdictions having no substantial nexus to the controversy in question. The MVMA believes that it can address this issue from the vantage point of business corporations which have direct experience with the burdens imposed by such litigation. The views of domestic manufacturers should materially assist the Court and provide a useful supplement to the presentation of petitioner, a corporation domiciled in another nation.

Respectfully submitted,

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MAY 1983

## QUESTION PRESENTED

Whether the Due Process Clause bars a state court from exercising *in personam* jurisdiction over a corporation when the forum state is neither the state of incorporation nor the principal place of business of the corporation, and all of the events relevant to the controversy occurred outside the state and had no effect on any of its residents.

## TABLE OF CONTENTS

	PAGE
INTEREST OF THE AMICUS CURIAE .....	1
STATEMENT .....	2
INTRODUCTION AND SUMMARY OF ARGUMENT .....	6
ARGUMENT.....	8
I. A FORUM STATE, WHICH IS NOT THE STATE OF INCORPORATION OR PRINCIPAL PLACE OF BUSINESS OF A CORPORATION, MAY NOT AS- sert <i>IN PERSONAM</i> JURISDICTION OVER THAT CORPORATION WITH RESPECT TO A CAUSE OF ACTION HAVING NO RELATIONSHIP TO THE FORUM STATE WITHOUT IMPOSING AN UN- REASONABLE BURDEN ON THE CORPORATION IN VIOLATION OF THE DUE PROCESS CLAUSE....	8
II. A FORUM STATE, WHICH HAS NO INTEREST IN THE EVENTS GIVING RISE TO A CAUSE OF ACTION IN ANOTHER JURISDICTION, AND WHICH HAS NO INTEREST IN PROTECTING NON-RESIDENT PLAINTIFFS, MAY NOT ASSERT <i>IN PERSONAM</i> JURISDICTION OVER A FOREIGN CORPORATION WITHOUT EXCEEDING THE TERRITORIAL LIMITS ON ITS SOVEREIGN POW- ERS IMPOSED BY THE DUE PROCESS CLAUSE.....	16
III. A FOREIGN CORPORATION IS NOT AMENABLE TO <i>IN PERSONAM</i> JURISDICTION MERELY BE- CAUSE IT CONDUCTS BUSINESS IN THE FORUM STATE THAT IS UNRELATED TO THE UND- LYING CAUSE OF ACTION .....	20
CONCLUSION .....	28

## TABLE OF AUTHORITIES

	PAGE
<i>Cases:</i>	
<i>Blount v. Peerless Chemicals (P.R.), Inc.</i> , 316 F.2d 695 (2d Cir. 1963).....	17
<i>Cowan v. Ford Motor Company</i> , 694 F.2d 104 (5th Cir. 1982) .....	11, 18, 19, 20, 25
<i>Curtis Publishing Co. v. Birdsong</i> , 360 F.2d 344 (5th Cir. 1966) .....	5, 17
<i>Davis v. Farmers Cooperative Co.</i> , 262 U.S. 312 (1923).....	6, 13
<i>Denver &amp; Rio Grande Western Railroad Co. v. Terte</i> , 284 U.S. 284 (1932).....	13
<i>Edgar v. Mite Corp.</i> , ____ U.S. ___, 50 U.S.L.W. 4767 (1982).....	18, 23
<i>Empire Abrasive Equipment Corp. v. Watson, Inc.</i> , 567 F.2d 554 (3d Cir. 1977).....	17
<i>Frost Trucking Co. v. Railroad Commission of California</i> , 271 U.S. 583 (1926).....	26
<i>Gulf Oil Corp. v. Gilberti</i> , 330 U.S. 501 (1947) .....	10, 19, 20
<i>Hanson v. Denckla</i> , 357 U.S. 235 (1958) .....	9, 23
<i>International Milling Co. v. Columbia Transportation Co.</i> , 292 U.S. 511 (1934) .....	22
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945).....	5, 6, 8, 9, 10, 14, 15, 20
<i>Keeton v. Hustler Magazine Inc.</i> , 682 F.2d 33 (1st Cir. 1982), cert. granted No. 82-485 (January 24, 1983).....	11, 17
<i>L.D. Reeder Contractors of Arizona v. Higgins, Industries, Inc.</i> , 265 F.2d 768 (9th Cir. 1959).....	17
<i>Louisville &amp; Nashville R. Co. v. Chatters</i> , 279 U.S. 320 (1929).....	13

	PAGE
<i>McGee v. International Life Insurance Co.</i> , 355 U.S. 220 (1957) .....	5, 9
<i>Michigan Central Railroad Co. v. Mix</i> , 278 U.S. 492 (1929).....	11, 13
<i>Old Wayne Mutual Life Association v. McDonough</i> , 204 U.S. 8 (1907) .....	12, 13, 15
<i>Pennoyer v. Neff</i> , 95 U.S. 714 (1877).....	8
<i>Perkins v. Benguet Mining Co.</i> , 342 U.S. 437 (1952).....	3, 5, 6, 9, 14, 24
<i>Piper Aircraft Co. v. Reyno</i> , 454 U.S. 235 (1981) ...	10, 19
<i>Ratliff v. Cooper Laboratories, Inc.</i> , 444 F.2d 745 (4th Cir. 1971) .....	17, 26
<i>Rosenberg Bros. &amp; Company, Inc. v. Curtis Brown Co.</i> , 260 U.S. 516 (1923).....	15, 24
<i>Rush v. Savchuk</i> , 444 U.S. 320 (1980) .....	16, 23, 24
<i>Schreiber v. Allis-Chalmers Corp.</i> , 611 F.2d 790 (10th Cir. 1979) .....	18, 26
<i>Seymour v. Parke Davis &amp; Co.</i> , 423 F.2d 584 (1st Cir. 1970) .....	12, 17
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977).....	9, 22
<i>Simon v. Southern Railway Co.</i> , 236 U.S. 115 (1915).....	6, 12
<i>Sioux Remedy Co. v. Cope</i> , 235 U.S. 197 (1914) ....	14, 26
<i>State ex rel. Michelin v. Wells</i> , 657 P.2d 207 (Oregon S. Ct. 1982) .....	17
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	6, 8, 9, 16, 25, 26
 <i>Statute:</i>	
<b>28 U.S.C. 1404(a).....</b>	<b>26</b>

	PAGE
<i>Miscellaneous:</i>	
A. Scott, <i>Jurisdiction Over Nonresidents Doing Business Within a State</i> , 32 Harv. L. Rev. 871 (1919).....	26
A. von Mehren and D. Trautman, <i>Jurisdiction to Adjudicate: A Suggested Analysis</i> , 79 Harv. L. Rev. 1121 (1966).....	15
Comment, <i>Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson</i> , 80 Columbia L. Rev. 1341 (1980) .....	18
<i>Developments In The Law, State-Court Jurisdiction</i> , 73 Harv. L. Rev. 909 (1960) .....	9, 15
J. Martin, <i>Constitutional Limitations on Choice of Law</i> , 61 Cornell L. Rev. 185 (1976) .....	11
L. Brilmayer, <i>How Contacts Count: Due Process Limitations on State Court Jurisdiction</i> , 1980 Supreme Court Rev. 77 .....	18, 24
1 <i>Moore's Federal Practice</i> (1982 ed.) .....	9
Note, <i>Jurisdiction Over Foreign Corporations—An Analysis of Due Process</i> , 104 U. Pa. L. Rev. 381 (1955).....	23
R. Leflar, <i>American Conflicts Law</i> (3d ed. 1977) ...	12
<i>Restatement (Second) of Conflict of Laws</i> (1971)..	8

IN THE

**Supreme Court of the United States**  
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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
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v.

**ELIZABETH HALL, ET AL.**

*ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF TEXAS*

**BRIEF FOR THE MOTOR VEHICLE  
MANUFACTURERS ASSOCIATION  
AS AMICUS CURIAE**

**INTEREST OF THE AMICUS CURIAE**

As explained in the foregoing motion for leave to file the instant brief amicus curiae, the Motor Vehicle Manufacturers Association (MVMA) is a trade organization that includes the nation's principal manufacturers of motor vehicles. Members of the MVMA distribute their products in interstate commerce in every state in the union. As a result, those members have been exposed to lawsuits brought in inconvenient forums which are far removed from the domiciles of the parties and witnesses, and which have no relationship to the subject matter of the litigation.

Such forum shopping by plaintiffs imposes a substantial burden on members of the MVMA. Accordingly, the MVMA has a strong interest in the disposition of the present case, in which the Court is called upon to further define the limitations imposed by the Due Process Clause on state court jurisdiction over foreign corporations.

## STATEMENT

1. In January 1976, a helicopter owned by petitioner Helicopteros Nacionales De Colombia, S.A. ("defendant") crashed in the Amazon jungles of Peru. Four citizens of the United States died in that accident (Pet. App. 1a, 63a). Those persons resided in Oklahoma, Illinois, and Arizona (*id.* at 48a). Following the accident, respondents Elizabeth Hall, *et al.* ("plaintiffs"), who were relatives of the decedents, filed suit against defendant in the District Court of Harris County, Texas, alleging that pilot negligence caused the helicopter crash (*id.* at 63a). None of the plaintiffs is a resident of Texas (*id.* at 15a).

The defendant is a corporation organized under the laws of the nation of Colombia (Pet. App. 32a), with its principal place of business in South America (*id.* at 33a). At the time of the helicopter crash, defendant was engaged in the transportation of workers and supplies in Peru. Defendant does not maintain any offices in Texas, is not authorized to do business in Texas, and does not recruit employees in Texas (*id.* at 2a).

However, defendant has conducted certain business activities in Texas on a continuous and systematic basis. In particular, it purchased substantially all of its helicopter fleet in Texas, spending approximately \$4 million (\$50,000 per month) from 1970 to 1976 as a purchaser of equipment, parts and services (Pet. App. 3a). It also sent employees to Texas to pick up helicopters and sent pilots and maintenance personnel to Texas for training (*ibid.* ). It conducted negotiations in Texas and elsewhere that led to the signing in Peru of its contract to provide helicopter service. It received roughly \$5,000,000 pursuant to that contract, which was paid from a bank in Texas (*id.* at 2a-3a; Pet. Reply Br. App. 79a-81a).

2. Defendant filed a special appearance in the trial court and sought dismissal of the complaints, contending, *inter alia*, that the Due Process Clause forbids assertion of *in personam* jurisdiction over it (Pet. App. 63a-64a). The trial court

overruled the special appearance and motion to dismiss. Following a trial by jury, it entered judgment against defendant in the sum of \$1,141,200 (*id.* at 64a).

On appeal from that judgment, the Court of Civil Appeals of Texas reversed, holding that the trial court lacked *in personam* jurisdiction (Pet. App. 63a-71a). With three Justices dissenting, the Supreme Court of Texas initially affirmed the decision of the Court of Civil Appeals (Pet. App. 46a-62a), noting that “[n]one of the plaintiffs in this suit are Texas residents, nor were any of the deceased workers. All of the events relevant to the cause of action occurred in South America” (*id.* at 55a). The court explained that the complaints alleged negligent “pilot error” in Peru, not defective manufacture of any product in Texas (Pet. App. 53a). In that situation, the court concluded, jurisdiction could be asserted over the defendant foreign corporation only if it had a “general presence” in the forum (*id.* at 54a) comparable to that in *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445 (1952):

“*Perkins* illustrates the type of activity that has been held sufficient to justify the exercise of jurisdiction based upon *unrelated* contacts with the forum. In *Perkins*, the corporate defendant carried out extensive business activities in the forum state, including banking, correspondence, maintenance of official records, holding of directors’ meetings, and payment of employee salaries. These activities were so substantial that the forum became the temporary headquarters of the corporation. The exercise of jurisdiction under such circumstances was thus justified by the fact that the corporate defendant became, in effect, a resident of the forum. As a commentator has observed, ‘The proper characterization of *Perkins* \* \* \* is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.’”

The court pointed out that, in the present case, the defendant did not engage in “pervasive” corporate activities in the forum state comparable to those in *Perkins*, and Texas

could not be characterized as the corporation's "own backyard" (Pet. App. 52a, 54a). Thus, because Texas was an inconvenient forum for the defendant, and because Texas could not assert that this litigation serves to "protect[ ] its citizens" or to "provide[ ] a procedure for peaceful resolution of [a] dispute[ ] that [arose] in whole or in part within \* \* \* [its] territory," the Supreme Court of Texas ruled that exercise of *in personam* jurisdiction would offend the Due Process Clause (*id.* at 55a).

3. On petition for rehearing, the Supreme Court of Texas, with three Justices dissenting, reversed its initial decision (Pet. App. 1a-31a), concluding that the defendant had sufficient "contacts" (*id.* at 5a) with the forum state to justify the proceeding against it. The court also identified what it believed to be a sufficient "interest" of the State of Texas in adjudicating the dispute. It noted first that, even though the plaintiffs are not residents of Texas, they nonetheless are "citizen[s] of this country." It further observed that the victims of the crash originally had been hired in Texas to work in Peru by Williams-Sedco-Horn (an organization based in Texas that is not involved in this litigation) (*id.* at 6a).<sup>1</sup> Accordingly, the court reasoned, Texas has an interest in "protecting the employees" of its local companies — even if those employees themselves are nonresidents and even if they are involved in an accident in another jurisdiction (*ibid.* ).

Justices Pope and Barrow and Chief Justice Greenhill dissented for the reasons stated in the court's initial opinion (Pet. App. 15a-31a, 32a-45a). They explained that the Due Process Clause forbids a state to exercise *in personam* jurisdiction over a foreign corporation to adjudicate a claim instituted by a non-resident plaintiff that is unrelated to the forum, unless

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<sup>1</sup> Williams-Sedco-Horn, a joint venture engaged in work on a pipeline in Peru, originally employed the decedents in Houston. They were transported in defendant's helicopter after they reached South America (Pet. App. 2a).

the corporation has such a pervasive presence in the forum that it is equivalent to an "insider" or local resident (*id.* at 43a). The dissenting Justices noted that "[t]his relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation or principal place of business for the defendant" (*id.* at 43a n. 8), as was the case in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

In addition, the dissenting Justices explained that the trial court had reached out to decide a controversy in which Texas had no legitimate interest. Citing *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 346-347 (5th Cir. 1966), they observed that "'[t]here must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives the State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum'" (Pet. App. 42a n. 7). The dissenting Justices noted that, in this Court's past decisions, such as *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), the state which exercised jurisdiction had a direct and substantial interest in adjudicating the underlying controversy (Pet. App. 42a-43a n. 7). In the present case, by contrast, the forum state lacked any significant interest.

The dissenting Justices also expressed grave concern over the practical implications of the expansive decision of the majority. They pointed out that the majority decision serves to make Texas the "courthouse for the world" (*id.* at 32a), in contravention of the interests of other jurisdictions responsible for adjudicating local controversies. Thus, the majority "has established Texas as a 'magnet' forum," drawing foreign litigation into the local courthouse solely because the defendant has conducted unrelated business in that jurisdiction (*id.* at 45a).

## INTRODUCTION AND SUMMARY OF ARGUMENT

1. The complaints in this case seek to compel a foreign corporation, which has its domicile and principal place of business in another jurisdiction, to defend itself in a state which has no connection with the plaintiffs or with the underlying cause of action. Such an inappropriate selection of forum imposes an unfair burden on the defendant and denies the protections guaranteed by the Due Process Clause. *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945).

Filing suit in a forum distant from the domicile and principal place of business of a corporate defendant, and remote from the situs of the alleged tort, seriously encumbers the defendant's presentation of relevant evidence. Such a litigating tactic also exposes the defendant to substantial procedural disadvantages in contravention of the requirements of fundamental fairness. In view of these adverse consequences, this Court repeatedly has held that, as a general matter, a non-resident plaintiff may not sue a foreign corporation with respect to causes of action arising outside the forum. *Simon v. Southern Railway Co.*, 236 U.S. 115, 130 (1915); *Davis v. Farmers Cooperative Co.*, 262 U.S. 312, 315 (1923). Only when the forum is the domicile or principal place of business of a corporation may it compel the corporation to defend against a claim having no nexus to the forum. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

2. Wholly apart from the burdens imposed by suits against foreign corporations raising claims that are unrelated to the forum, such suits invite state tribunals to exceed "the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). Accordingly, it is particularly important in such cases to carefully examine "the forum State's interest in adjudicating the dispute" (*ibid.*).

Under this standard, the plaintiff must establish that the suit in question seeks to protect injured residents of the forum.

to vindicate the property or pecuniary rights of the state, or to effectuate a regulatory policy of local government. In the absence of such facts, the state has no legitimate interest that justifies imposing on a foreign corporation the substantial burden of defending itself in an inconvenient forum.

3. The tort alleged in this case occurred outside the forum state and had no effect within it; the plaintiffs and the victims of the accident have no connection with the forum state; and the forum state is not the domicile or principal place of business of the defendant. The fact that the defendant does some local business that is unrelated to the plaintiff's claim is outweighed by those other considerations. In this situation, the burden of defending in the forum violates the Due Process Clause.

Moreover, the State of Texas has no interest in the outcome of this lawsuit that would justify its imposition of that weighty burden. This litigation does not seek to protect forum residents, to preserve the pecuniary or property rights of the state, or to advance any legitimate regulatory policy.

To permit the exercise of jurisdiction in a case such as this would have injurious consequences for manufacturers doing business throughout the United States. Today, most major manufacturers distribute products to consumers in all fifty states and thus do some business in each state. Acceptance of the principle announced by the court below — that any significant business in the forum state is sufficient to predicate suit against a corporation with respect to unrelated claims arising anywhere — would expose manufacturers to forum-shopping tactics of the most objectionable kind. Manufacturers could be sued in any state on any cause of action that accrued in any jurisdiction. This adverse result can be avoided by reaffirming the traditional rule that only the place of domicile or principal place of business is competent to adjudicate claims against a corporation that have no connection with the forum.

## ARGUMENT

I. A FORUM STATE, WHICH IS NOT THE STATE OF INCORPORATION OR PRINCIPAL PLACE OF BUSINESS OF A CORPORATION, MAY NOT ASSERT *IN PERSONAM* JURISDICTION OVER THAT CORPORATION WITH RESPECT TO A CAUSE OF ACTION HAVING NO RELATIONSHIP TO THE FORUM STATE WITHOUT IMPOSING AN UNREASONABLE BURDEN ON THE CORPORATION IN VIOLATION OF THE DUE PROCESS CLAUSE

a. As a general matter, a forum state may exercise *in personam* jurisdiction over a corporation only if the plaintiff establishes "such contacts of the corporation with the state \*\*\* as make it reasonable in the context of our federal system of government to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection." *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). In more recent cases, this Court has emphasized that "the burden on the defendant" is not merely "relevant" — it is "always a primary concern." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

It is well established that the state of incorporation of a company is presumptively a fair and reasonable forum, regardless of the origin of the cause of action. See *Pennoyer v. Neff*, 95 U.S. 714, 735 (1877); *Restatement (Second) of Conflict of Laws* §41 & Comment (1971). Likewise, it is presumptively fair to file suit, regardless of the origin of the cause of action, in the forum which is the "principal place of business" of the corporation. *International Shoe Co.*, *supra*, 326 U.S. at 317;

*Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).<sup>2</sup>

Beyond this, a corporation may be required to defend itself in a remote forum if it has entered the jurisdiction and there conducted business activities that give rise to a local tort or contract claim. See, e.g., *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957); *International Shoe Co.*, *supra*, 326 U.S. at 320 ("The obligation which is here sued upon arose out of those very [local] activities").<sup>3</sup>

These principles provide no justification for the trial court's exercise of jurisdiction here. Texas is not the plaintiff's residence and is not the defendant corporation's domicile or principal place of business. Nor is it a state where the defendant corporation, while engaged in local business, committed a tort against, or infringed the contractual rights of, any resident. To the contrary, this suit was filed by a non-resident plaintiff in a state unrelated to the defendant's domicile or principal place of business and is based on a tort that occurred thousands of miles from the state's borders with no local impact whatsoever. As we demonstrate below, this inappropriate selection of forum is fundamentally unfair and violative of the protections of the Due Process Clause.

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<sup>2</sup> The state of incorporation and principal place of business can be identified with a minimum of uncertainty. See 1 *Moore's Federal Practice* ¶ 0.77 [2.-1] at 717.40, and ¶ 0.77 [3.-4] at 717.81 to 717.82 (1982 ed.); see also *Developments in the Law, State-Court Jurisdiction*, 73 Harv. L. Rev. 909, 933-934 (1960).

<sup>3</sup> By contrast, if the defendant corporation has not conducted local business activities and thereby committed some wrong within the forum, *in personam* jurisdiction may not be exercised. See *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at 296-299; see also *Shaffer v. Heitner*, 433 U.S. 186, 213-217 (1977); *Hanson v. Denckla*, 357 U.S. 235, 252 (1958).

b. The burdens imposed by filing a lawsuit in a jurisdiction that is not the domicile of any of the parties, and is not the situs of any of the events relevant to the determination of liability and damages, are substantial. If the complaint alleges defective design of a product, the witnesses and relevant documentary and engineering proof generally will be located in the company's principal place of business. Similarly, if the complaint alleges negligent use of a product (as in the present case), the witnesses to the event, the documentary proof, and the physical evidence all will be located in the jurisdiction where the accident took place. None of the relevant evidence will be conveniently available in a state that has no relationship to the incident and is not the place of business of the defendant or the residence of the plaintiff. See, e.g., *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 511 (1947): "Lynchburg, some 400 miles from New York, is the source of all proofs for either side, with possible exception of experts. Certainly, to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants." See also *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 258 (1981) ("A large proportion of the relevant evidence is located in Great Britain").<sup>4</sup>

The burdens on a corporation seeking to defend itself in a distant forum are not limited to difficulties in presenting evidence. See *Gilbert, supra*, 330 U.S. at 507: "the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconven-

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<sup>4</sup> *Gilbert* and *Reyno* applied the requirements of the doctrine of *forum non conveniens*. Those cases are instructive here because, like the doctrine of *forum non conveniens*, the Due Process Clause requires "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business \* \* \*." *International Shoe, supra*, 326 U.S. at 317.

ience to himself." In *Gilbert*, the plaintiff acknowledged that he brought suit in an inconvenient forum because his large demand for money damages would "stagger the imagination" of "a local jury." 330 U.S. at 510.<sup>5</sup>

Still worse, plaintiffs frequently file suit in jurisdictions that are inconvenient for the defense, inconvenient for themselves, and inconvenient for every witness involved in the litigation solely to obtain the benefit of liberal "procedural" rules which the forum state applies. See, e.g., *Cowan v. Ford Motor Company*, 694 F.2d 104 (5th Cir. 1982), discussed on pages 25-26, *infra*, where Texas residents filed a complaint in Mississippi concerning an alleged tort in Texas solely to obtain the benefit of the longer Mississippi statute of limitations.<sup>6</sup>

The same forum-shopping tactic is evident in many other cases. See, e.g., *Keeton v. Hustler Magazine, Inc.*, 682 F.2d 33, 35 (1st Cir. 1982), cert. granted No. 82-485 (January 24, 1983) ("in this case, it seems likely that New Hampshire \*\*\* would consider its statute of limitations procedural, and apply it, resurrecting an action that is dead everywhere else. \*\*\* This fact explains why plaintiff wishes to sue in New Hampshire, but it does not automatically make it fair for her to do so. Indeed, these very circumstances suggest why it would be unfair to

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<sup>5</sup> Plaintiffs frequently engage in forum shopping solely to obtain the benefit of liberal damage awards returned by juries in particular geographic areas, or to obtain substantial settlements through the threat of such damage awards. See, e.g., *Michigan Central Railroad Co. v. Mix*, 278 U.S. 492, 495 (1929) (the plaintiff brought suit in a remote forum because "her chances of recovery would be better there").

<sup>6</sup> The Fifth Circuit in *Cowan* rejected the contention that the Due Process and Full Faith and Credit Clauses require the forum state to apply the shorter statute of limitations of the state where the cause of action arose. But see *J. Martin, Constitutional Limitations on Choice of Law*, 61 Cornell L. Rev. 185, 221, 223 n. 124 (1976) ("a state should be forbidden from entertaining a cause of action after it is dead in the state which created it").

allow plaintiff to sue"); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 585 (1st Cir. 1970) ("Plaintiff concedes that her only reason for suing in New Hampshire is to avoid the Massachusetts statute of limitations").

c. In view of the unfair burdens imposed by such forum-shopping tactics, this Court repeatedly has held that, as a general matter, a corporation may not be sued by a non-resident plaintiff on a cause of action having no relationship to the forum state. Such suits may be entertained *only* if the forum state is the corporation's domicile or principal place of business. This follows not only as a matter of discretion under the doctrine of *forum non conveniens*, but also of constitutional compulsion under the Due Process Clause. See, e.g., *Old Wayne Mutual Life Association v. McDonough*, 204 U.S. 8, 21-23 (1907), holding that a foreign corporation's consent to be sued in the forum state based on claims arising from its business activities cannot constitutionally be deemed to encompass claims arising from business activities in other states.<sup>7</sup> Justice Harlan explained that "such assent cannot properly be implied where it affirmatively appears, as it does here, that the business was not transacted in [the forum state]." A judgment obtained on the basis of such an unrelated cause of action is "void as wanting in due process of law." *Id.* at 22-23. The Court reiterated that conclusion in its unanimous opinion in *Simon v. Southern Railway Company*, 236 U.S. 115, 130 (1915):

"[T]his power to designate by statute the officer upon whom service in suits against foreign corporations may be made relates to business and transactions within the jurisdiction of the State enacting the law. Otherwise, claims on contracts wherever made and suits for torts wherever committed might by virtue of such compulsory

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<sup>7</sup> The Court in *Old Wayne* considered a statute providing that foreign corporations doing local business are deemed to "consent" to service of process in the forum state. Today, "[p]robably all American states have statutes to this effect." R. Leflar, *American Conflicts Law* §28 at 51 (3d ed. 1977).

statute be drawn to the jurisdiction of any State in which the foreign corporation might at any time be carrying on business. The manifest inconvenience and hardship arising from such extra-territorial extension of jurisdiction \* \* \* could not defeat the power if in law it could be rightfully exerted. But these possible inconveniences serve to emphasize the importance of the principle laid down in *Old Wayne Life Association v. McDonough*, 204 U.S. 22, that the statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other States."

Accord, *Louisville & Nashville R. Co. v. Chatters*, 279 U.S. 320, 328 (1929):

This Court has reached the same result in cases applying the Commerce Clause. For example, in *Davis v. Farmers Cooperative Co.*, 262 U.S. 312 (1923), the Court invalidated a state statute that required a corporation to consent to suit on causes of action unrelated to the forum state as a condition to soliciting business in the forum. Justice Brandeis, writing for the Court, emphasized the unfair burden imposed by such an attempted assertion of jurisdiction (*id.* at 315):

"[T]his statute compels every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the State. Jurisdiction is not limited to suits arising out of business transacted within [the forum State]. \* \* \* It is asserted, whatever the nature of the cause of action, wherever it may have arisen, and although the plaintiff is not, and never has been, a resident of the State. \* \* \* This condition imposes upon interstate commerce a serious and unreasonable burden which renders the statute obnoxious to the commerce clause."

The Court took judicial notice (*ibid.*) of the fact that "litigation in States and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations," and thus "impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers \* \* \*." Accord, *Michigan Central Railroad Co. v. Mix*, 278 U.S.

492, 495-496 (1929); *Denver & Rio Grande Western Railroad v. Terte*, 284 U.S. 284, 287-288 (1932); *Sioux Remedy Co. v. Cope*, 235 U.S. 197, 205 (1914).

Of course, if the forum state is the principal place of business of a foreign corporation, it may assert jurisdiction even with respect to causes of action that arise in other states. See *International Shoe Co.*, *supra*, 326 U.S. at 317-318; *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). In *Perkins*, the defendant corporation relocated its corporate headquarters and principal place of business to Ohio after enemy forces occupied its overseas properties during World War II. In that new location, the corporation carried on "continuous and systematic corporate activities," including "directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc." *Id.* at 445. In addition, the president, general manager, and principal stockholder of the company resided in Ohio and maintained an office there for supervision of the company's affairs. *Id.* at 447-448.<sup>6</sup>

Thus, *Perkins* carves out an exception to the principle of *Old Wayne*, *Simon*, and the other cases cited on pages 12-13, *supra*, when the foreign corporation is so pervasively present in the forum state as to be the functional equivalent of a local domiciliary. In the absence of such facts, however, the Due

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<sup>6</sup> "He kept there office files of the company. He carried on there correspondence relating to the business of the company and its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors' meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation." *Id.* at 448.

Process Clause prohibits assertion of jurisdiction over a foreign corporation to adjudicate a cause of action having no relationship to the forum state. See A. von Mehren and D. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1144 (1966); *Developments In The Law, State-Court Jurisdiction*, 73 Harv. L. Rev. 909, 931-932 (1960). In the words of the dissenting Justices in the court below, imposition of the weighty burden of defending a lawsuit having no nexus to the forum state is reasonable only if the state is properly viewed as the "corporate headquarters," "habitual residence," or "principal place of business" of the foreign corporation (Pet. App. 43a-44a & n. 8).

Stated otherwise, a foreign corporation's mere conduct of "some business" within the jurisdiction — regardless of the systematic or continuous nature of that business — is an insufficient basis for predicating general jurisdiction. *Old Wayne*, *supra*, 204 U.S. at 21; *Rosenberg Co. v. Curtis Brown Co.*, 260 U.S. 516, 518 (1923). See also *International Shoe*, *supra*, 326 U.S. at 318, noting in dictum that "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity \* \* \*." Unless the corporate defendant's local presence is comparable to that in *Perkins*, the rule of *Old Wayne* and its progeny applies. That rule requires dismissal of a suit based on a cause of action unrelated to the forum state.<sup>9</sup>

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<sup>9</sup> No decision of this Court has upheld suit by a non-resident plaintiff against a foreign corporation based on a cause of action unrelated to the forum unless the corporation has made the forum its *de facto* headquarters or principal place of business. The view of the majority in the court below that such a suit may be predicated on mere unrelated business "contacts" with the forum cannot be reconciled with this Court's decisions cited on pages 12-14, *supra*, and finds no support in *Perkins*.

II. A FORUM STATE, WHICH HAS NO INTEREST IN THE EVENTS GIVING RISE TO A CAUSE OF ACTION IN ANOTHER JURISDICTION, AND WHICH HAS NO INTEREST IN PROTECTING NON-RESIDENT PLAINTIFFS, MAY NOT ASSERT *IN PERSONAM* JURISDICTION OVER A FOREIGN CORPORATION WITHOUT EXCEEDING THE TERRITORIAL LIMITS ON ITS SOVEREIGN POWERS IMPOSED BY THE DUE PROCESS CLAUSE

Wholly apart from the burdens imposed on a foreign corporation by a suit brought in a forum having no relationship to the underlying controversy, the Due Process Clause places restrictions on the power of state courts to adjudicate such disputes. Those restrictions derive from the limited status of state tribunals in the interstate and international judicial system.

a. As this Court stated in *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at 291-292, the Due Process Clause serves two "related" but "distinguishable" functions. "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." Thus, among the factors to be considered in applying the Due Process Clause are "the forum State's interest in adjudicating the dispute" and "the interstate judicial system's interest in obtaining the most efficient resolution of controversies." *Id.* at 292. In every case, "the reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our federal system of government,' " and the need for "'orderly administration of the laws.' " *Id.* at 293-294. Accord, *Rush v. Savchuk*, 444 U.S. 320, 327 (1980) (requiring a careful analysis of "'the relationship among the defendant, the forum, and the litigation' "); see also *id.* at 329 and 332.

With substantial consistency, the federal courts of appeals have applied these principles to preclude exercises of *in personam* jurisdiction in diversity litigation unless there is "a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives [the] State sufficient interest in the litigation [to] constitutionally compel litigants to defend in a foreign forum." *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 346-347 (5th Cir. 1966). See *Keeton v. Hustler Magazine, Inc.*, 682 F.2d 33, 35 (1st Cir. 1982), cert. granted No. 82-485 (January 24, 1983) ("New Hampshire has no special interest in protecting a nonresident against this out-of-state activity"); *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971) ("Significant in the instant factual setting is the lack of a 'rational nexus' between the forum state and the relevant facts surrounding the claims presented"); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 585-586 (1st Cir. 1970) (denying jurisdiction because "the cause of action is not only wholly unrelated to the forum and the business conducted therein, but the plaintiff, too, is unconnected with the forum"); *L.D. Reeder Contractors of Arizona v. Higgins Industries, Inc.*, 265 F.2d 768, 779 (9th Cir. 1959) (refusing to "sanction the filing of suit in any federal district court in the United States in whose geographical area a national distribution of manufactured products was advertised, sold or delivered, irrespective of where any contract which was allegedly the basis of the lawsuit was negotiated or consummated"); *Empire Abrasive Equipment Corp. v. Watson*, 567 F.2d 554, 557 (3d Cir. 1977) ("A state must have some palpable interest — rationally connected with public policy — in adjudicating a dispute within its borders for jurisdiction to be lawfully acquired"); *Blount v. Peerless Chemicals, Inc.*, 316 F.2d 695, 697 (2d Cir. 1963) (the Due Process Clause requires a "relationship" between the forum state and "those activities of the cause of action upon which suit is founded"); see also *State ex rel. Michelin v. Wells*, 657 P.2d 207, 210-211 (Oregon S. Ct. 1982) ("there must be at least one contact with the forum state which is substantively relevant to

the cause of action").<sup>10</sup> As the dissenting Justices in the court below correctly concluded (Pet. App. 32a), these principles bar a state tribunal from attempting to function as the "courthouse for the world." They confine the state court's jurisdiction to the scope of its legitimate territorial interests. But compare *Cowan v. Ford Motor Co.*, 694 F.2d 104 (5th Cir. 1982), discussed on pages 25-26, *infra*.

Ordinarily, a state's interest extends only to the protection of its "own citizens" who have been injured by the actions of the defendant (Pet. App. 43a n. 7). In other words, "the state has no legitimate interest in protecting non-resident" victims of alleged tortious acts. *Edgar v. Mite Corp.*, \_\_\_\_ U.S. \_\_\_\_ 50 U.S.L.W. 4767, 4772 (1982). In the absence of injury to a forum state resident or the occurrence of a wrong inside the state, the plaintiff must demonstrate some tangible adverse effect within the forum's borders, some harm to the state's own "property" or pecuniary interest, or some distinct infringement of the state's internal "regulatory policies" (Pet. App. 43a n. 7).

If such facts are not established, a state court has no legitimate interest in adjudicating the lawsuit. It therefore has no power to impose upon the defendant the substantial burden of defending itself in an inconvenient forum. Moreover, any attempt to assert jurisdiction without a palpable state interest only impairs the right of other jurisdictions to vindicate their own internal policies. For example, in cases such as *Cowan v. Ford Motor Co.*, discussed on pages 25-26, *infra*, and *Schreiber v. Allis-Chalmers Corp.*, 611 F.2d 790 (10th Cir. 1979), the plaintiffs' forum shopping resulted in the filing of suit in a jurisdiction having no interest in the subject matter of the litigation. This inappropriate choice of forum had the purpose

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<sup>10</sup> See also L. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 Supreme Court Rev. 77, 82; Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 Columbia L. Rev. 1341, 1343-1349 (1980).

and effect of nullifying the statute of limitations of the only state that possessed an interest in the controversy.

b. Forum-shopping tactics, which result in the filing of suits in jurisdictions having no interest in the underlying controversy, impose a serious strain on the interstate and international judicial system. Crowded dockets of local courts are increasingly burdened by foreign suits imported into the state to obtain the benefit of liberal procedural rules and anticipated generous jury awards. As this Court observed in *Gulf Oil Corp. v. Gilbert, supra*, 330 U.S. at 508: "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin."<sup>11</sup>

Beyond this, imported litigation compels local jurors to expend substantial time to determine rights and liabilities of parties in cases arising in other jurisdictions. See *Gilbert, supra*, 330 U.S. at 508-509: "Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and

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<sup>11</sup> *Cowan v. Ford Motor Company, supra*, 694 F.2d at 107, illustrates those severe strains on the judicial system. Under the Fifth Circuit's decision in that case, plaintiffs from other states may file tort actions in the district courts in Mississippi based on events occurring outside the state in order to obtain the benefit of Mississippi's 6-year statute of limitations. Most states have substantially shorter statutes of limitations. Thus, plaintiffs who have slept on their rights in other jurisdictions may bring actions against any manufacturer in the nation which distributes its products in Mississippi, regardless of the domicile of the parties and the locus of the alleged tort.

According to the Monthly Report of the Clerk of Court for the Southern District of Mississippi, the court where the *Cowan* case was filed, there are now 2,989 civil cases pending in that court — a caseload that is shouldered by only three judges, one of whom is on senior status. When plaintiffs residing in other states bring suit in Mississippi solely to escape the statute of limitations applicable to their causes of action, this only serves to "further congest already crowded courts." *Reyna, supra*, 454 U.S. at 252.

reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home."

Finally, a trial court that assumes jurisdiction over a foreign cause of action generally must determine and apply the substantive law of the place where the tort occurred or where the contract was consummated. This is a significant additional burden for the trial judge. See *Gilbert, supra*, 330 U.S. at 509: "There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." That concern applies *a fortiori* in a case arising outside of the United States, in which the applicable substantive law is that of a foreign nation whose official case reports and statutes are not in English. See *Reyno, supra*, 454 U.S. at 260 (noting the trial court's "lack of familiarity" with foreign law).

In short, the filing of suit in a distant forum having no substantial interest in resolving the dispute serves only to frustrate the "fair and orderly administration of the laws" in the interstate and international judicial system. *International Shoe Co., supra*, 326 U.S. at 319.

### III. A FOREIGN CORPORATION IS NOT AMENABLE TO *IN PERSONAM* JURISDICTION MERELY BECAUSE IT CONDUCTS BUSINESS IN THE FORUM STATE THAT IS UNRELATED TO THE ASSERTED CAUSE OF ACTION

The underlying question presented in this case, and in cases such as *Cowan v. Ford Motor Company, supra*, is whether a foreign corporation's conduct of commercial activities in a state far removed from its domicile and principal place of business is a sufficient basis to adjudicate controversies having no nexus to the state or the business conducted therein. The answer to this question is of vital importance to manufacturing corporations across the nation. Most major manufacturers

distribute products to consumers in all fifty states. A holding by this Court that general jurisdiction may be predicated on such commercial activity would expose those corporations to suit in virtually every state in the union on any claim arising anywhere. The Due Process Clause has long stood as a barrier to such an obliteration of traditional jurisdictional limitations.

a. The requirements of the Due Process Clause, summarized on pages 8-20, *supra*, prevent the State of Texas from asserting jurisdiction in a case such as this. There is no dispute that the defendant's place of incorporation and principal place of business is the nation of Colombia (Pet. App. 32a, 48a). Accordingly, there is no doubt that the present case was not filed in the defendant's principal place of business or place of domicile.

It is equally clear that the alleged tort, and all events giving rise to it, occurred outside of the forum. The helicopter crash occurred in Peru, allegedly as a result of "pilot error" (Pet. App. 53a). There is no proof that events in Texas contributed to that pilot error, or that the helicopter was defectively manufactured in Texas.<sup>12</sup>

Finally, there is no dispute that all of the persons killed in the accident, and all of the survivors who have brought suit, are residents of states other than the forum state (Pet. App. 32a, 48a, 70a). Thus, in the words of the dissenting Justices in the court below, "[n]either the plaintiffs, the decedents, the de-

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<sup>12</sup> In its initial decision, the Supreme Court of Texas observed (Pet. App. 53a): "there is no evidence of a connection between the cause of action and Helicol's dealings with Bell Helicopter in Fort Worth. A lawsuit based upon the use of a defective helicopter purchased from Bell might have indicated such a connection. In the present case, however, Hall and the other plaintiffs offered evidence of Helicol's negligence due to *pilot error*. There was no showing that the negligence extended beyond the events immediately surrounding the accident." The court, in its subsequent opinion granting rehearing, did not question the accuracy of this factual statement.

fendant, nor the tort action have any connection with Texas" (Pet. App. 32a).

Because the forum state is distant from the domicile of the parties and witnesses, this proceeding involves all of the unreasonable burdens discussed on pages 10-13, 19-20, *supra*. Exercise of jurisdiction has required the defendant to litigate in a court far removed from its domicile and base of operations, and far removed from the site of all substantively relevant events. In addition, trial of this complex case has added to the burden on the Texas judicial system and imposed upon the limited time of Texas jurors (Pet. App. 64a). The decision below also opens the doors of Texas courts to any suit against any company purchasing or selling products in Texas, and has the potential to disrupt the orderly administration of justice in the interstate judicial system.

Despite the generalized assertions in the majority opinion in the court below (Pet. App. 6a), the State of Texas has no palpable interest in the subject matter of this litigation that would permit it to assert *in personam* jurisdiction over the foreign corporation. It cannot, of course, claim to be protecting its own residents. None of the victims of the crash or their survivors resided in Texas.<sup>13</sup> Moreover, the helicopter crash in the Amazon jungles of Peru did not have any identifiable effect within the borders of the State of Texas, did not impair the State's pecuniary interest, and did not infringe any regulatory policy of the state. See *Shaffer v. Heitner*, *supra*, 433 U.S. at 214 (noting "the failure of the Delaware Legislature to assert the state interest appellee finds so compelling.").<sup>14</sup>

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<sup>13</sup> See *International Milling Co. v. Columbia Transportation Co.*, 292 U.S. 511, 519-520 (1934) ("we do not hold that the residence of the suitor will fix proper forum without reference to other considerations. \* \* \* Residence, however, even though not controlling, is a fact of high significance").

<sup>14</sup> The majority opinion noted (Pet. App. 3a) that defendant obtained "liability insurance payable in American dollars" to protect

*(Footnote continued on next page)*

It is, of course, true, as the court below noted, that the plaintiffs here are residents of "this country." But Texas has no *parens patriae* relationship with the citizens of other states. See *Edgar v. Mite Corp.*, \_\_\_\_ U.S. \_\_\_\_, 50 U.S.L.W. 4767, 4772 (1982), explaining that "the state has no legitimate interest in protecting non-resident" victims of alleged tortious acts. See also *Hanson v. Denckla*, *supra*, 357 U.S. at 252.

The court also suggested that Texas has an interest in protecting "employees of its residents" (Pet. App. 6a). (The "resident" referred to by the court was a Texas joint venture which did not include the defendant and was not a party to this litigation (see page 4, *supra*.) But if, in fact, Texas had a legitimate interest in adjudicating any claim of any employee of any Texas company — regardless of the employee's residence, the situs of the alleged tort, and the relationship between the employer and the claim at issue — then the countless employees of "countless international companies" with "headquarters" in Texas (see Pet. App. 6a) would be privileged to sue other parties in Texas in utter disregard of the jurisdictional principles summarized above. We are aware of no precedent that would support such a sweeping proposition. It is significant, moreover, that the record is devoid of evidence that any Texas "employer" has ever alleged injury to itself as a result of the accident in Peru, or filed any claim related thereto in the Texas judicial system.<sup>15</sup>

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*(Footnote continued from previous page)*

itself against damage claims. The existence of that insurance does not, however, give the forum state an interest in adjudicating this particular case, and does not mitigate the unfair burden of conducting trial far from the defendant's domicile and principal place of business and far from the scene of the alleged tort.

<sup>15</sup> The plaintiffs' desire to secure "convenient" relief (Pet. App. 6a) does not support the majority's conclusion. See *Rush v. Savchuk*, *supra*, 444 U.S. at 332, warning against a "subtle shift in focus from the defendant to the plaintiff." See also, Note, *Jurisdiction Over*

*(Footnote continued on next page)*

While the court below observed (Pet. App. 5a) that the defendant had "numerous" business contacts in Texas, including the purchase of equipment, the training of employees, and the negotiation of business contracts (*id.* at 9a), those contacts have no relevance here. The defendant's activities in Texas — including its negotiations concerning the construction project in Peru — have no substantive connection to the cause of action.<sup>16</sup> As the Texas Supreme Court observed in its initial opinion, "[n]o evidence has been presented \* \* \* indicating that the negotiations in any way dealt with the deceased workers or any matters leading or contributing to the helicopter crash in Peru. As such, a connection between the cause of action based upon the South American disaster and Helicol's activities in Texas is remote and at best coincidental" (Pet. App. 53a). Such unrelated contacts are insufficient to support jurisdiction unless they are so pervasive as to make the forum state the foreign corporation's principal place of business. See, e.g., *Perkins v. Benguet Mining Co.*, *supra*, 342 U.S. at 445-448;

*(Footnote continued from previous page)*

*Foreign Corporations -- An Analysis of Due Process*, 104 U. Pa. L. Rev. 381, 398-399 (1955): "The balance in each case is made between the interests of the defendant on one side and the interests of the state (not merely the plaintiff) on the other. \* \* \* If the state chooses to allow a nonresident plaintiff to use its forum, it will do so probably as a matter of comity, but that decision does not enter into the balance of interests that determines whether the assertion of jurisdiction is reasonable or unreasonable."

<sup>16</sup> As Professor Brilmayer has observed (*How Contacts Count: Due Process Limitations on State Court Jurisdiction*, *supra*, 1980 Sup. Ct. Review at 82): "Substantive relevance provides a natural test. A contact is related to the controversy if it is \* \* \* a fact relevant to the merits. \* \* \* In contrast, an occurrence in the forum State of no relevance to a totally domestic cause of action is an unrelated contact. \* \* \*." See also *Rush v. Savchuk*, *supra*, 444 U.S. at 329, explaining that the element relied on by the plaintiff to predicate jurisdiction "is not the subject matter of the case, \* \* \* nor is it related to the operative facts of the negligence action."

*Rosenberg Bros. & Company, Inc. v. Curtis Brown Co., supra*, 260 U.S. at 517-518.

In short, the dissenting Justices in the court below correctly concluded (Pet. App. 44a) that "Texas should not assume jurisdiction over this case that involves nonresident plaintiffs and a nonresident defendant when the cause of action arises out of facts totally unrelated to the forum state."

b. Acceptance of the contrary view adopted by the majority of the Supreme Court of Texas would expose manufacturers to unrestrained forum shopping destructive of the purposes of the Due Process Clause. That danger is exemplified by *Cowan v. Ford Motor Company*, 694 F.2d 104 (5th Cir. 1982). *Cowan* involves a complaint filed by Texas residents in Mississippi; the complaint seeks redress for a tort that occurred solely in Texas. The defendant, Ford Motor Company, has no connection with the forum other than selling products there through independent retailers, which it also does in every other state. Thus, the tort at issue has no connection whatsoever with Mississippi, and Mississippi has no interest in the resolution of the dispute. The plaintiffs' only reason for filing suit in Mississippi is to escape the applicable statute of limitations in Texas. See page 19, note 11, *supra*.

Most of the nation's major manufacturers of consumer products — whether the products are automobiles, magazines, or toothbrushes — distribute their products in all fifty states of the union.<sup>17</sup> Each state, moreover, has enacted some kind of foreign corporation statute which subjects companies doing business locally to the jurisdiction of local courts, usually by requiring them to appoint an agent to accept process within the

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<sup>17</sup> We disagree with petitioner's suggestion (Pet. 10-11) that the protections of the Due Process Clause apply differently to purchasers and sellers. The principles summarized above apply equally to both purchasers and sellers engaged in interstate commerce. See, e.g., *World-Wide Volkswagen*, *supra*, 444 U.S. at 291-294, 296.

state.<sup>18</sup> If, as the Fifth Circuit concluded in *Cowan*, the conduct of business in such a state on a regular basis is a sufficient predicate for jurisdiction, then it would follow that most of the nation's major manufacturers are automatically amenable to suit on any cause of action in every state in the union. This would be true regardless of the domicile of the parties, the situs of the alleged wrong, and the respective interests of the states involved.

Such a result would provide an open invitation to forum shopping of the most objectionable kind and would interfere unreasonably with the free flow of interstate commerce. Jurisdictions with the longest statutes of limitations would be selected by plaintiffs regardless of the burdens imposed on the local judicial system and without consideration of the convenience of parties and witnesses.<sup>19</sup> This result would permit

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<sup>18</sup> Those statutes do not alter the analysis. See, e.g., *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971); "the application to do business and the appointment of an agent for service to fulfill a state law requirement is of no special weight in the present context." A state has no power to require the defendant to surrender the protections of the due process clause as a prerequisite to engaging in interstate commerce within the jurisdiction. See *Sioux Remedy Co. v. Cope*, 235 U.S. 197, 205 (1914); *Frost Trucking Co. v. Railroad Commission of California*, 271 U.S. 583, 594-600 (1926); A. Scott, *Jurisdiction Over Nonresidents Doing Business Within A State*, 32 Harv. L. Rev. 871, 887 (1919) ("Undoubtedly a statute forbidding a foreign corporation to enter the state to carry on interstate commerce, without filing a consent to the jurisdiction of the courts of the state as to all causes of action, no matter where or how arising, is unconstitutional").

<sup>19</sup> Discretionary transfer of such cases to a more convenient forum under 28 U.S.C. 1404(a), a provision that applies only to federal proceedings, does not remedy the unfairness associated with such forum-shopping tactics, since the applicable law remains the law of the transferor jurisdiction—which some courts have held to include the statute of limitations. E.g., *Schreiber v. Allis-Chalmers Corp.*, 611 F.2d 790 (10th Cir. 1979).

states to "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system" (*World-Wide Volkswagen, supra*, 444 U.S. at 292), and would frustrate "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" (*ibid.*).

These adverse consequences may be avoided by reaffirming in the present case that the Due Process Clause bars a plaintiff from suing a corporation on a cause of action having no relationship to the forum state unless the forum is the domicile or principal place of business of the corporation.<sup>20</sup>

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<sup>20</sup> Regardless of this Court's disposition of the present case, there should be little doubt as to the correct disposition of a case such as *Cowan*. In contrast to the present case, the claim in *Cowan* has not even a remote or coincidental link with the forum, and the plaintiffs' forum-shopping activities have nullified the protections of the statute of limitations of the only jurisdiction that has an interest in the controversy.

## CONCLUSION

The judgment of the Supreme Court of Texas should be reversed.

Respectfully submitted.

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**In the Supreme Court of the United States**

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
PETITIONER

v.

ELIZABETH HALL, ET AL.

*ON WRIT OF CERTIORARI TO  
THE SUPREME COURT OF TEXAS*

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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### **QUESTION PRESENTED**

The United States will address the following question:

Whether a non-resident corporation's purchases of goods in the forum state, even if coupled with the presence in the forum state of the corporation's employees for the purpose of receiving training related to the operation and maintenance of the goods purchased, constitutes sufficient contacts under the Due Process Clause for the exercise of *in personam* jurisdiction over the non-resident corporation on a cause of action unrelated to the purchases.

## TABLE OF CONTENTS

	Page
Interest of the United States .....	1
Statement .....	2
Summary of argument .....	5
Argument:	
A foreign corporation's purchases of equipment in the forum state, even when coupled with the presence in the forum state of the corporation's employees for the purpose of receiving training and other services related to the use of the equipment purchases, is insufficient under the Due Process Clause to vest the forum state with <i>in personam</i> jurisdiction over the foreign corpora- tion on an unrelated cause of action .....	7
Conclusion .....	15

## TABLE OF AUTHORITIES

### Cases:

<i>Gulf Oil Corp. v. Gilbert</i> , 330 U.S. 501 .....	13, 14
<i>Hanson v. Denckla</i> , 357 U.S. 235 .....	9
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 .....	8, 14
<i>Kulko v. California Superior Court</i> , 436 U.S. 84 .....	9
<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437 .....	4, 5, 8
<i>Piper Aircraft Co. v. Reyno</i> , 454 U.S. 235 .....	13-14

## Cases—Continued:

*Rosenberg Bros. & Co. v. Curtis Brown Co.*,  
 260 U.S. 516 ..... 5, 6, 8, 9, 14

*World-Wide Volkswagen Corp. v. Woodson*,  
 444 U.S. 286 ..... 9

## Constitution and statutes:

U.S. Const. Amend. XIV (Due Process  
 Clause) ..... 1, 5, 6, 7, 14

Export Trading Company Act of 1982, Pub.  
 L. No. 97-290, 96 Stat. 1233 *et seq.* ..... 12

Trade Act of 1974, 19 U.S.C. (& Supp. V)  
 2101 *et seq.* ..... 10  
 19 U.S.C. (Supp. V) 2171(a) ..... 10  
 19 U.S.C. (& Supp. V) 2171(c)(1) ..... 10

## Miscellaneous:

Opening Statement of Ambassador William E.  
 Brock, United States Trade Representative,  
 Before a Jt. Oversight Hearing of the  
 Senate Comm. on Finance and the Senate  
 Comm. on Banking, Housing, and Urban  
 Affairs on U.S. Trade Policy (July 8,  
 1981) ..... 10, 13

Reorg. Plan No. 3 of 1979, § 1(b)(1),  
 44 Fed. Reg. 69273 ..... 10

S. 414, 98th Cong., 1st Sess. (1983) ..... 12

*U.S. Trade Policy, Phase I: Administration  
 and Other Public Agencies: Hearings Before  
 the Subcomm. on Trade of the House Comm.  
 on Ways and Means, 97th Cong., 1st Sess.  
 (1981)* ..... 12-13

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*ON WRIT OF CERTIORARI TO  
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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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**INTEREST OF THE UNITED STATES**

This case presents a substantial question concerning the level and type of contacts sufficient under the Due Process Clause to permit a state to exercise *in personam* jurisdiction over a non-resident defendant on a cause of action unrelated to the defendant's contacts with the forum state. The Court's resolution of this question could have a significant impact on the foreign trade relations of the United States. In particular, the United States is concerned that the ability of American firms to compete in world trade markets could be adversely affected because foreign corporations might be dissuaded from purchasing American products if the mere purchases of products in the United States — together with training in the United States as part of the purchase agreement — is sufficient to subject foreign businesses to the jurisdiction of American courts for causes of action totally

unrelated to their purchases. Such a result would be detrimental to the government's efforts to promote the export of American products.

#### STATEMENT

Petitioner is a Colombian corporation that has, under the ruling below, been subjected to wrongful death actions in the courts of the State of Texas. The background of the litigation is as follows:

1. Petitioner ("Helicol") is in the business of providing helicopter transportation in South America to oil and construction companies. An American joint venture, known as Williams-Sedco-Horn and based in Texas, formed a consortium ("Consorcio") under Peruvian law to construct a pipeline from the interior of Peru to the Pacific Ocean (Pet. App. 2a, 46a).<sup>1</sup> Helicol was contacted by Williams, an Oklahoma construction company and a member of Consorcio, about providing helicopter services in Peru for the consortium (*id.* at 2a, 47a). Helicol sent a representative to Tulsa, Oklahoma, to discuss a contract for such services; thereafter, the Helicol representative travelled to Houston, Texas, to continue the contract discussions (*ibid.*). At the meeting in Houston, the parties apparently reached final agreement on the terms of a contract between Helicol and Consorcio (*ibid.*). The contract was not finalized in Houston, however, because Peruvian law required that it be approved by the Peruvian Air Force (*ibid.*). Accordingly, the contract was finalized in Lima, Peru, where it was typed in Spanish on official Peruvian government stationery (*ibid.*). The contract provided that the residence of all

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<sup>1</sup>Williams-Sedco-Horn is composed of Williams International Sund-americana, Ltd., a Delaware corporation headquartered in Oklahoma; Sedco Construction Corporation, a Texas corporation; and Horn International, Inc., a Texas corporation (Pet. App. 2a n.1).

parties to the contract would be Lima and that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts (*id.* at 47a).

In addition to the one meeting in Houston, Helicol's other contacts with Texas were that it purchased substantially all of its helicopter fleet from Bell Helicopter Company in Fort Worth (Pet. App. 3a, 48a-49a). As part of the purchase price for the helicopters, Bell provided operational and maintenance training to Helicol's employees, so that Helicol had employees in Texas on a regular basis for training purposes (*ibid.*). Helicol also sent employees to Texas from time to time to negotiate helicopter purchases with Bell (*id.* at 3a, 9a). Helicol, however, does not perform any of its business operations in Texas, has never solicited business in Texas, has never sold any products that reached Texas, is not authorized to do business in Texas, has never had an agent for the service of process in Texas, and has never recruited employees in Texas (*id.* at 2a).<sup>2</sup>

In January 1976, a helicopter owned by Helicol crashed in Peru, killing respondents' decedents, all of whom were employees of Williams-Sedco-Horn, the American parent of Consorcio (Pet. App. 2a). Respondents' decedents were American citizens domiciled in states other than Texas who had been hired by Williams-Sedco-Horn in Houston and sent to Peru to work on construction of the pipeline (*ibid.*). Respondents, who also are not Texas residents, filed wrongful death actions against Helicol in the District Court of Harris County, Texas, alleging pilot negligence as the cause of the helicopter accident (*id.* at 1a, 6a).

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<sup>2</sup>Although Helicol and respondents appear to disagree on the extent of Helicol's contacts with Texas, the above-noted facts, having been accepted by *both* the majority and dissenting opinions in the Supreme Court of Texas, do not appear to be debatable.

2. Helicol filed a special appearance to contest the state court's *in personam* jurisdiction (Pet. App. 1a). The trial court denied Helicol's motion to dismiss and held that it had jurisdiction (*ibid.*). The cases went to trial, resulting in a jury verdict against Helicol in the amount of \$1,141,200 (*id.* at 64a). Helicol appealed to the Texas Court of Civil Appeals, which held that the trial court lacked *in personam* jurisdiction (*id.* at 63a-71a). By a divided vote, the Supreme Court of Texas initially affirmed the court of appeals (*id.* at 46a-62a). The majority noted that "[n]one of the plaintiffs in this suit are Texas residents, nor were any of the deceased workers. All of the events relevant to the cause of action occurred in South America" (*id.* at 55a). The court further noted that the complaints alleged negligent "pilot error" in Peru, not defective manufacture of any product in Texas (*id.* at 53a; emphasis omitted). In this situation, the majority concluded, jurisdiction could be asserted over the defendant foreign corporation only if it had a "general presence" in the forum comparable to that considered in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445-448 (1952) (Pet. App. 54a):

*Perkins* illustrates the type of activity that has been held sufficient to justify the exercise of jurisdiction based upon *unrelated* contacts with the forum. In *Perkins*, the corporate defendant carried out extensive business activities in the forum state, including banking, correspondence, maintenance of official records, holding of directors' meetings, and payment of employee salaries. These activities were so substantial that the forum became the temporary headquarters of the corporation. The exercise of jurisdiction under such circumstances was thus justified by the fact that the corporate defendant became, in effect, a resident of the forum.

The majority pointed out that, in the present case, Helicol did not engage in "pervasive" corporate activities in the

forum state comparable to those in *Perkins*, and Texas could not be characterized as the corporation's "own backyard" (Pet. App. 52a, 54a; citation omitted). Thus, because Texas was an inconvenient forum for Helicol, and because Texas could not assert that this litigation served to "protect[] its citizens" or to "provid[e] a procedure for peaceful resolution of [a] dispute[] that [arose] in whole or in part within \* \* \* [its] territory," the majority ruled that the exercise of *in personam* jurisdiction would offend the Due Process Clause (*id.* at 55a).

3. On rehearing, the Supreme Court of Texas reversed its initial decision, again by a divided vote (Pet. App. 1a-45a). The new majority concluded that Helicol had sufficient contacts with Texas to support *in personam* jurisdiction (*id.* at 5a-7a). The majority also relied on the interest of the State of Texas in adjudicating the dispute. Though noting that respondents are not residents of Texas, the court observed that they are "citizen[s] of this country" (*id.* at 6a). The court also observed that the victims of the helicopter crash in Peru originally had been "hired in Houston, Texas by a Texas resident" (*ibid.*).<sup>3</sup> Accordingly, the court concluded that Texas had an interest in "protecting the employees" of its local companies (*ibid.*). Finally, the court noted respondents' "interest and desire in obtaining convenient and effective relief" (*id.* at 6a-7a) and concluded that that interest would best be served by upholding *in personam* jurisdiction over Helicol. The dissenting justices would have adhered to the court's original ruling (*id.* at 32a-45a).

#### SUMMARY OF ARGUMENT

In *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), the Court held that mere purchases of goods in

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<sup>3</sup>The Texas "resident" that hired respondents' decedents was Williams-Sedco-Horn (Pet. App. 2a).

the forum state by a non-resident corporation were insufficient to support *in personam* jurisdiction for a cause of action not related to the purchases. Although the Court has subsequently considered the requirements of the Due Process Clause in this area in a variety of differing factual contexts, nothing in its subsequent cases has cast doubt on the validity of *Rosenberg*.

In this case, we ask the Court to recognize that the realities of today's sophisticated marketing practices, particularly for "high technology" products, frequently make employee training and related services an essential part of a purchase agreement. Thus, it is not uncommon for foreign firms desiring to buy high technology products to send their operational and maintenance employees to the United States to receive such training. In our view, the presence of a foreign firm's employees in the forum state for such purposes should not alter the result reached in *Rosenberg*; rather, purchases plus training or services related to the purchases should not be treated any differently than purchases alone. Such a result reflects a sensible, modern-day application of *Rosenberg*.

The issue is substantial because of the critical importance of foreign trade to our national economy. A foreign firm that finds itself subject to suit in a state court on an unrelated cause of action merely because it has sent employees to that state to learn how to operate and maintain equipment purchases may well find it more expedient to do its foreign trading with firms in other countries. The Executive Branch and Congress have, in recent years, taken important steps to remove obstacles and potential obstacles to the competitive standing of American firms in world markets. Those efforts would be severely undercut if they were met with the imposition of new barriers such as that imposed by the decision below.

## ARGUMENT

A FOREIGN CORPORATION'S PURCHASES OF EQUIPMENT IN THE FORUM STATE, EVEN WHEN COUPLED WITH THE PRESENCE IN THE FORUM STATE OF THE CORPORATION'S EMPLOYEES FOR THE PURPOSE OF RECEIVING TRAINING AND OTHER SERVICES RELATED TO THE USE OF THE EQUIPMENT PURCHASES, IS INSUFFICIENT UNDER THE DUE PROCESS CLAUSE TO VEST THE FORUM STATE WITH *IN PERSONAM* JURISDICTION OVER THE FOREIGN CORPORATION ON AN UNRELATED CAUSE OF ACTION

As earlier noted (see page 3 note 2, *supra*), the parties appear to dispute the extent of Helicol's contacts with Texas. The interest of the United States in this case does not require us to take sides in that factual dispute. We note, however, that the Supreme Court of Texas considered Helicol's most substantial contact with Texas to be its purchase of some \$4 million worth of helicopters and associated parts and services from Bell Helicopter (Pet. App. 3a). Should this Court's decision turn on that fact, the ramifications for the ability of American businesses to compete effectively in world markets could be substantial. Accordingly, we confine our submission to that issue.

1. In our view, the question whether mere purchases by a non-resident defendant<sup>4</sup> in the forum state are sufficient to support the exercise of *in personam* jurisdiction by the forum state on a cause of action *not* related to the purchases

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<sup>4</sup>Although the federal government's interest in this case stems from its implications for foreign trade, the principles that we discuss necessarily apply to all non-resident defendants, not just "alien" defendants. Thus, we do not separately address the second question presented by the petition.

is controlled by *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923). In *Rosenberg*, this Court held that mere purchases of goods in the forum state by a non-resident corporation were insufficient to support *in personam* jurisdiction. This was so even if the non-resident corporation undertook purchasing trips into the forum state "at regular intervals" (*id.* at 518). Thus, the Court held that *in personam* jurisdiction was lacking even though the cause of action actually arose in the forum state. Nothing in this Court's subsequent cases casts doubt on *Rosenberg*'s rationale.

*International Shoe Co. v. Washington*, 326 U.S. 310 (1945), is, of course, the Court's landmark decision with respect to *in personam* jurisdiction over non-resident defendants. In that case, the Court established a flexible standard that significantly expanded the ability of state courts to assert *in personam* jurisdiction over such defendants. Although *Rosenberg* antedated *International Shoe*, the latter recognized (326 U.S. at 318) that *Rosenberg* was consistent with the principles announced therein.

Subsequently, in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the Court addressed the issue of *in personam* jurisdiction over a non-resident defendant for a cause of action arising out of activities entirely distinct from the defendant's activities in the forum state. There, the Court ruled that a non-resident corporation's contacts with the State of Ohio were sufficiently "substantial," "continuous and systematic" to confer Ohio with *in personam* jurisdiction if the State chose to exercise it (*id.* at 445, 447). But it is clear from the Court's description of the facts in *Perkins* that the case involved substantially more than mere purchases. Indeed, the Court's summary of the corporation's contacts (*id.* at 447-448) indicates that the corporation carried on nearly all of its corporate activities in Ohio.

Then, in *Hanson v. Denckla*, 357 U.S. 235, 251 (1958), the Court warned that "the flexible standard of *International Shoe*" does not "herald[] the eventual demise of all restrictions on the personal jurisdiction of state courts." This warning was given vitality in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), in which the Court overturned a decision holding that, in a products-liability action, Oklahoma courts could exercise *in personam* jurisdiction over a New York automobile retailer because of the retailer's sale of an automobile in New York that became involved in an accident in Oklahoma. See also *Kulko v. California Superior Court*, 436 U.S. 84 (1978) (rejecting *in personam* jurisdiction over non-resident parent in domestic relations case).

Thus, *Rosenberg* has not been limited in any way by the Court's more recent decisions, and it is therefore controlling when mere purchases are involved. Moreover, to take account of the realities of today's sophisticated products and marketing practices, the purchases approved in *Rosenberg* necessarily must include the training and services that go hand-in-hand with those purchases. As we discuss in the next section, if operational and maintenance training is not deemed to be an integral part of the purchase transaction, purchase agreements in certain key sectors of our economy might not be consummated in the first place. Given the nature of the equipment here (*i.e.*, helicopters) and other "high technology" equipment discussed below, treating purchases and training in the same fashion as purchases alone is a sensible, modern-day reading of *Rosenberg* that is entirely consistent with the rationale of that case.

2. The United States Trade Representative has informed us that while many American export transactions do not require the seller to provide training to the personnel of the buyer, the purchase-training agreement between Helicol and Bell Helicopter in the instant case is typical in certain

sectors of the economy.<sup>5</sup> The Trade Representative has advised us that the provision of training by the seller is especially important in the export of high technology, turnkey projects such as nuclear power plants; in such transactions, the seller, as part of the sale transaction, customarily provides training for local personnel involved in the maintenance, overhaul and operation of the plant. The training often takes place at the manufacturer's facilities (*i.e.*, in the United States) because of the specialized and complex nature of the training equipment and procedures. The Trade Representative has advised Congress that services of this nature "are critical to exports of high technology and capital goods." Opening Statement of Ambassador William E. Brock, United States Trade Representative, Before a Jt. Oversight Hearing of the Senate Comm. on Finance and the Senate Comm. on Banking and Housing, and Urban Affairs on U.S. Trade Policy 6 (July 8, 1981) (hereinafter "Statement on U.S. Trade Policy").<sup>6</sup>

The aircraft industry is another sector of the economy in which the provision of training for operators and maintenance personnel is a frequent practice. This industry includes the manufacture and sale of helicopters as well as fixed-wing aircraft. In this area, a purchaser's operators are frequently trained at the manufacturer's facilities prior to the delivery of the aircraft; and in some cases, when

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<sup>5</sup>The Trade Act of 1974, 19 U.S.C. (& Supp. V) 2101 *et seq.*, "established within the Executive Office of the President the Office of the United States Trade Representative" (19 U.S.C. (Supp. V) 2171(a)). The duties of the Trade Representative are set forth at 19 U.S.C. (& Supp. V) 2171(c)(1). In Section 1(b)(1) of Reorg. Plan No. 3 of 1979, 44 Fed. Reg. 69273, the President established the Trade Representative "as the principal advisor to the President on international trade policy," and delegated to the Trade Representative the "primary responsibility \* \* \* for developing, and for coordinating the implementation of, United States international trade policy \* \* \*."

<sup>6</sup>A copy of this document is being lodged with the Clerk of this Court and served on the parties.

replacement operators are added to the staff of the purchaser, training continues for new operators at the manufacturer's facilities. When aircraft are modified for specific operating conditions, maintenance personnel are also trained by the manufacturer to work with and maintain the equipment as modified. Such training normally continues beyond purchase.

Foreign purchasers often seek such training at the facilities of manufacturers in the United States because the training equipment and the type of training they desire are only available here. For example, the simulators on which operational and maintenance training takes place are themselves expensive and technologically advanced pieces of equipment, and they may not be available overseas. Moreover, foreign purchasers sometimes want their operating and maintenance personnel trained in this country so that they will be trained in accordance with the high standards set by our government. Purchase agreements also are sometimes preceded by the extended presence of the purchaser's representatives at the manufacturer's facilities as the specifications of the product and the terms of the purchase agreement are developed, and as the engineers of the purchaser work with the manufacturer's engineers to develop specific modifications (e.g., to accommodate high altitude or extreme temperature operating conditions). Finally, "acceptance crews" consisting of pilots and mechanics employed by the purchaser may spend two to three months in this country prior to accepting delivery of the equipment; their function is to ensure that the equipment meets all contract specifications and that operations are fully satisfactory, and their favorable report is a prerequisite to the purchaser's acceptance of delivery.

Thus, to the extent that the decision below relies on Helicol's purchase of its helicopter fleet in Texas, coupled with the presence of Helicol employees in Texas to receive training on the operation and maintenance of the helicopters, it has a significant potential for discouraging foreign

firms from purchasing American products. This would thwart positive efforts of Congress and the Executive Branch to make American firms and products more competitive internationally. As part of these efforts, the government has developed a comprehensive plan to remove impediments in our laws that were perceived as obstacles (or potential obstacles) to this competitiveness. See, e.g., Export Trading Company Act of 1982, Pub. L. No. 97-290, 96 Stat. 1233 *et seq.*; S. 414, 98th Cong., 1st Sess. (1983) (a bill to amend and clarify the Foreign Corrupt Practices Act of 1977); Statement of Ambassador William E. Brock, United States Trade Representative, *U.S. Trade Policy, Phase I: Administration and Other Public Agencies: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 97th Cong., 1st Sess. 5-43 (1981) (hereinafter cited as "*Hearings*");<sup>7</sup> Statement of Lionel H. Olmer, Under Secretary for International Trade, Dep't of Commerce in *Hearings, supra*, at 335-348, 411-417; Statement of W. Stephen Piper, Office of the United States Trade Representative in *Hearings, supra*, at 402-407, 408-411.

Maintaining and improving our competitive posture in high technology industries, including the aircraft industry, is particularly vital. As Mr. Piper noted in his testimony before Congress (*Hearings, supra*, at 402):

[T]he aerospace industry is of major importance to the U.S. balance of trade \* \* \* [and] export sales are critical to its viability. Over the past 5 years, 67 percent of civil transport aircraft sales in the United States have been for export; 46 percent of civil helicopter sales and 28 percent of general aviation aircraft sales have been for export.

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<sup>7</sup>Ambassador Brock told the Subcommittee that "the restoration of U.S. competitiveness" was one of the "three \* \* \* most critical issues presently affecting the position of the United States in the international trade arena." *Hearings, supra*, at 5.

Equally important, however, Mr. Piper stressed various forces at work that threaten to erode the preeminence of America's aircraft industry. For example, he testified that (*id.* at 403):

The first force is the foreign government focus on and targeting of this high technology industry for development assistance as a major element of their economic industrial policies. Foreign governments are willing to provide the capital and to bear the risk for launching new civil aircraft models.

Because the American aerospace industry cannot count on the same government subsidies that foreign governments are providing for our competitors, other measures are required. See, *e.g.* Statement on U.S. Trade Policy, *supra*, at 2-3. The United States accordingly has an interest in assuring that its efforts to remove barriers to foreign trade are not undermined by the establishment of different obstacles.

3. The inconvenience to a foreign company of defending an unrelated lawsuit brought in a forum in which the company has done no more than purchase equipment and related services necessary for the conduct of its business elsewhere needs little elaboration. In a case such as the present one, the witnesses required for the trial of the case, the documentary proof, and the physical evidence will almost always be located in the jurisdiction in which the accident took place, and not in the state in which, by happenstance, the foreign defendant purchased some of its equipment. See, *e.g.*, *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 511 (1947) ("Lynchburg, some 400 miles from New York, is the source of all proofs for either side, with possible exception of experts. Certainly to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants."). See also *Piper Aircraft Co. v. Reyno*, 454 U.S.

235, 258 (1981) ("A large proportion of the relevant evidence is located in Great Britain.").<sup>8</sup>

Thus, both fairness and judicial economy, as well as the interest of the United States in promoting its competitiveness in world markets, dictate the conclusion that the Court should adhere to its ruling in *Rosenberg* with respect to purchases, even when those purchases may, as here, be coupled with the presence in the forum state of the foreign corporation's employees for purposes of training and services necessarily related to the purchase transaction.

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<sup>8</sup> *Gilbert* and *Reyno* applied the requirements of the doctrine of *forum non conveniens*. Those cases are instructive here because, like the doctrine of *forum non conveniens*, the Due Process Clause requires "[a]n 'estimate of the inconvenience' which would result to the corporation from a trial away from its 'home' or principal place of business \*\*\*." *International Shoe Co. v. Washington*, *supra*, 326 U.S. at 317.

**CONCLUSION**

Helicol's purchases of helicopter equipment in Texas and the presence of Helicol's employees in Texas for related operational and maintenance training do not, without more, vest the Texas courts with *in personam* jurisdiction over Helicol for a cause of action not related to the purchases and training.

Respectfully submitted.

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MAY 1983

No. 82-1127-CSX Title: Helicopteros Nacionales de Colombia, S.A.,  
Status: GRANTED Petitioner  
v.  
Elizabeth Hall, et al.

Docketed:  
January 4, 1983 Court: Supreme Court of Texas

Counsel for petitioner: Whalen, Thomas J.

Counsel for respondent: Pletcher, George E.

Entry	Date	Note	Proceedings and Orders
1	Jan 4 1983	G	Petition for writ of certiorari filed.
2	Feb 3 1983		Brief of respondents Elizabeth Hall, et al. in opposition filed.
3	Feb 9 1983		DISTRIBUTED. February 25, 1983
4	Feb 16 1983	X	Reply brief of petitioner Helicopteros Nacionales filed.
7	Feb 28 1983		DISTRIBUTED. March 4, 1983
8	Mar 7 1983		Petition GRANTED. *****
11	Apr 8 1983		Order extending time to file brief of petitioner on the merits until May 12, 1983.
12	May 10 1983	G	Motion of Motor Vehicle Manufacturers Association of the United States, Inc. for leave to file a brief as amicus curiae filed.
13	May 12 1983		Brief amicus curiae of United States filed.
14	May 12 1983		Lodging received.
15	May 12 1983		Joint appendix filed.
16	May 13 1983		Brief of petitioner Helicopteros Nacionales filed.
17	May 19 1983		Record filed.
18	May 25 1983		DISTRIBUTED. June 9, 1983
20	May 31 1983		Motion of Motor Vehicle Manufacturers Association of the United States, Inc. for leave to file a brief as amicus curiae GRANTED.
21	Jun 13 1983		Brief of respondents Elizabeth Hall, et al. filed.
22	Jul 8 1983		CIRCULATED.
23	Sep 14 1983	X	Reply brief of petitioner Helicopteros Nacionales filed.
24	Sep 21 1983		SET FOR ARGUMENT. Tuesday, November 8, 1983. (3rd case) (1 hour)
25	Nov 8 1983		ARGUED.